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1  
2 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
3 -----X  
4 JOSE GUZMAN,  
5 PLAINTIFF,  
6 Action No. 1  
7 -against- Case No.:  
8 1:16-cv-03499-GBD  
9 MEL S. HARRIS & ASSOCIATES, LLC, et al.,  
10 DEFENDANTS,  
11 -----X  
12 UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
13 -----X  
14 AGUSTINA BUENO,  
15 PLAINTIFF,  
16 Action No. 2  
17 -against- Case No.:  
18 1:16-cv-04737-WFK-VMS  
19 MEL S. HARRIS & ASSOCIATES, LLC, et al.,  
20 DEFENDANTS.  
21 -----X  
22 DATE: April 6, 2017  
23 TIME: 12:02 p.m.  
24  
25 VIDEOTAPED DEPOSITION of a Non-Party  
Witness, TODD FABACHER, taken by the  
respective parties, pursuant to the Federal  
Rules of Civil Procedure, held at the Law  
Office of Ahmad Keshavarz, 16 Court Street,  
26th Floor, Brooklyn, New York 11241, before  
Richard Aurelio, a Notary Public of the  
State of New York.

1  
2 FEDERAL STIPULATIONS  
3  
4 IT IS HEREBY STIPULATED AND AGREED by  
5 and between the counsel for the respective  
6 parties herein that the sealing, filing and  
7 certification of the within deposition be  
8 waived; that the original of the deposition  
9 may be signed and sworn to by the witness  
10 before anyone authorized to administer an  
11 oath, with the same effect as if signed  
12 before a Judge of the Court; that an  
13 unsigned copy of the deposition may be used  
14 with the same force and effect as if signed  
15 by the witness, 30 days after service of the  
16 original & 1 copy of same upon counsel for  
17 the witness.

18  
19 IT IS FURTHER STIPULATED AND AGREED  
20 that all objections except as to form, are  
21 reserved to the time of trial.  
22

23 \* \* \* \*  
24  
25

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2 APPEARANCES:  
3  
4  
5 THE LAW OFFICE OF AHMAD KESHAVARZ, ESQS.  
6 Attorneys for the Plaintiff  
7 in both actions  
8 16 Court Street, 26th Floor  
9 Brooklyn, New York 11241  
10 BY: AHMAD KESHAVARZ, ESQ.  
11 -and-  
12 JESSICA MOODY, ESQ.  
13  
14 HERBERT SMITH FREEHILLS, LLP  
15 Attorneys for the Defendants  
16 LR CREDIT 13, LLC in Action No. 1  
17 LR CREDIT 18, LLC in Action No. 2  
18 450 Lexington Avenue, 14th Floor  
19 New York, New York 10017  
20 BY: BENJAMIN P. MILLS, ESQ.  
21  
22 O'HARE PARNAGIAN LLP  
23 Attorneys for the Defendants  
24 SAMSERV, INC. and WILLIAM MLOTOK  
25 in both actions  
82 Wall Street, Suite 300  
New York, New York 10005  
BY: JEFFREY S. LICHTMAN, ESQ.  
KAUFMAN DOLOWICH & VOLUCK, LLP  
Attorneys for the Non-Party Witness  
TODD FABACHER  
135 Crossways Park Drive, Suite 201  
Woodbury, New York 11797  
BY: BRETT A. SCHER, ESQ.

\* \* \*

1 T. FABACHER  
2 MR. KESHAVARZ: Could you mark  
3 these as exhibits, please.  
4 (Whereupon, the aforementioned  
5 subpoenas were marked as Plaintiff's  
6 Exhibits 1 and 2 for identification as  
7 of this date by the Reporter.)  
8 TODD FABACHER, called as a  
9 witness, having been first duly sworn by a  
10 Notary Public of the State of New York, was  
11 examined and testified as follows:  
12 EXAMINATION BY  
13 MR. KESHAVARZ:  
14 Q. Please state your name for the  
15 record.  
16 A. Todd Fabacher, T-O-D-D,  
17 F-A-B-A-C-H-E-R.  
18 Q. Where do you reside?  
19 A. 447 West 18th Street, Apartment  
20 7E, New York, New York 10011.  
21 Q. Thank you, Mr. Fabacher for your  
22 time. Appreciate it.  
23 A. Yes, sir.  
24 Q. You're here testifying in response  
25 to two subpoenas, Exhibit 1 and Exhibit 2,

1 (Pages 1 to 4)

<p>5</p> <p>1 T. FABACHER</p> <p>2 for the Guzman and Bueno cases; is that</p> <p>3 correct?</p> <p>4 A. I assume -- yes. I got subpoenas,</p> <p>5 so.</p> <p>6 Q. You got served Exhibits 1 and 2;</p> <p>7 is that correct?</p> <p>8 A. Can I read them?</p> <p>9 Q. Take your time.</p> <p>10 A. Yeah.</p> <p>11 (Perusing documents.)</p> <p>12 I just want to make sure that this</p> <p>13 is the -- yes, that's correct.</p> <p>14 Q. Okay.</p> <p>15 MR. KESHAVARZ: Do we have an</p> <p>16 agreement, counsel, that this</p> <p>17 deposition could be used for both the</p> <p>18 Bueno and the Guzman cases?</p> <p>19 MR. LICHTMAN: I think this</p> <p>20 deposition has been pursuant to</p> <p>21 subpoenas served in each case.</p> <p>22 MR. KESHAVARZ: So, yes?</p> <p>23 MR. LICHTMAN: That's the fact</p> <p>24 that it's been served as subpoenas in</p> <p>25 both cases.</p>	<p>7</p> <p>1 T. FABACHER</p> <p>2 it's --</p> <p>3 MR. KESHAVARZ: Where do --</p> <p>4 MR. MILLS: -- it's a waste of</p> <p>5 time.</p> <p>6 MR. KESHAVARZ: You don't want to</p> <p>7 agree to that?</p> <p>8 MR. LICHTMAN: You served a</p> <p>9 subpoena in this case with a notice in</p> <p>10 this case. So, to the extent that this</p> <p>11 is a properly noticed deposition</p> <p>12 without objection prior to the</p> <p>13 deposition, that's what it is.</p> <p>14 But to the extent you might use</p> <p>15 this for whatever purpose, I don't</p> <p>16 know.</p> <p>17 MR. KESHAVARZ: All right. Let's</p> <p>18 get the judges on the phone.</p> <p>19 MR. SCHER: Just noting for the</p> <p>20 record that this is counting against</p> <p>21 your -- your time against -- my client</p> <p>22 is here as a non-party witness. I</p> <p>23 don't care about what dispute you have</p> <p>24 amongst counsel.</p> <p>25 He's here, he's ready, willing and</p>
<p>6</p> <p>1 T. FABACHER</p> <p>2 MR. KESHAVARZ: I know but I just</p> <p>3 want to make sure that --</p> <p>4 MR. LICHTMAN: And we'll talk</p> <p>5 about the use when you seek to admit</p> <p>6 whatever you want to admit in whatever</p> <p>7 case.</p> <p>8 MR. KESHAVARZ: Do you really want</p> <p>9 to go to -- with --</p> <p>10 MR. MILLS: I join.</p> <p>11 MR. KESHAVARZ: -- with the judge</p> <p>12 on this? All right. Let's get the</p> <p>13 judge on the phone. This is a waste of</p> <p>14 everyone's time.</p> <p>15 MR. SCHER: Ahmad, we have a</p> <p>16 non-party witness here.</p> <p>17 MR. KESHAVARZ: Can we agree --</p> <p>18 MR. SCHER: The clock is ticking.</p> <p>19 MR. MILLS: You're an hour late.</p> <p>20 Can you start this?</p> <p>21 MR. KESHAVARZ: Can we agree that</p> <p>22 we can use this in both depositions --</p> <p>23 in both cases or not?</p> <p>24 MR. MILLS: You know where we</p> <p>25 stand. If you want to call the judge,</p>	<p>8</p> <p>1 T. FABACHER</p> <p>2 able to testify.</p> <p>3 MR. KESHAVARZ: Understood.</p> <p>4 THE WITNESS: Just to let you</p> <p>5 know, your subpoena's actually wrong.</p> <p>6 Because --</p> <p>7 MR. SCHER: I'm -- there's --</p> <p>8 there's no question.</p> <p>9 THE WITNESS: Oh.</p> <p>10 MR. SCHER: You're not answering</p> <p>11 anything.</p> <p>12 Q. Did you have a concern that one of</p> <p>13 the subpoenas -- there's an issue with the</p> <p>14 subpoenas, Mr. --</p> <p>15 A. No. I'm going to listen to my</p> <p>16 counsel.</p> <p>17 MR. MILLS: Sir, are we still on</p> <p>18 the record or --</p> <p>19 MR. KESHAVARZ: Yes, we're still</p> <p>20 on the record. We're on the record.</p> <p>21 MR. SCHER: Not your problem.</p> <p>22 THE WITNESS: Yeah, it's not my</p> <p>23 problem.</p> <p>24 Q. Is there an issue -- do you</p> <p>25 believe there is an issue with the</p>

	9		11
1	T. FABACHER	1	T. FABACHER
2	subpoenas?	2	defendants did not object. But now,
3	A. No, no, no, no, no. It's not my	3	they won't agree that I could use the
4	problem.	4	deposition in both cases.
5	Q. I didn't understand -- I didn't	5	So, the request for relief is an
6	say that. Do you believe that there's an	6	order from the Court to authorize me to
7	issue with the subpoenas?	7	use this deposition in -- in both the
8	A. I don't know. I'm not an	8	Guzman and the Bueno cases.
9	attorney, man.	9	And as soon as we get off the
10	Q. Do you believe there's --	10	phone, I'm going to call the District
11	A. I'm --	11	-- the Magistrate in Guzman and request
12	Q. -- an issue with the subpoenas?	12	the same relief. So, that's the -- the
13	A. -- I'm not an attorney. So, how	13	relief requested.
14	can I tell you whether it's a -- wrong or	14	LAW SECRETARY: Okay. Just so I
15	not?	15	understand -- make sure I understand
16	Q. Do you have an opinion about	16	it. You -- a dep of a non-party
17	whether there's --	17	witness in this and another case, the
18	A. I have no opinion.	18	SDNY. And you noticed it to be held
19	(Whereupon, a telephone call was	19	jointly. Defendants in both cases
20	made to the Chambers of the Hon. Vera	20	didn't object. But now, they do not
21	M. Scanlon, U.S. Magistrate and the	21	want you to use the deposition in both
22	following proceedings were had.)	22	cases?
23	MR. KESHAVARZ: Hi, this is Ahmad	23	MR. KESHAVARZ: They won't agree
24	Keshavarz. I'm calling in the Bueno	24	that I can use the depositions in both
25	case with Judge Scanlon. We're on the	25	cases. They want to be able to object
	10		12
1	T. FABACHER	1	T. FABACHER
2	record in a deposition, and we have a	2	to its use. So, that's the dispute.
3	dispute for the Judge to resolve if	3	MR. LICHTMAN: Well, that's
4	she's available. And I can go off the	4	actually -- hi. This is Jeff Lichtman.
5	record if you would like at any point.	5	I'm representing the defendant. That's
6	LAW SECRETARY: The judge is	6	a slightly mischaracterization.
7	actually about to head down to	7	We did -- we put on the record
8	arraignment. She's on criminal duty.	8	that we received notices that we know
9	If you -- let me see if -- here, can	9	that this witness has been subpoenaed.
10	you hold for one moment?	10	But with regard to stipulations with
11	(Whereupon, the telephone call was	11	regard to the depositions' use, without
12	placed on a brief hold.)	12	knowing to what specific use it's going
13	LAW SECRETARY: Hi. The Clerk at	13	to be put, I think it's an -- it's an
14	Chambers again. So, the judge can give	14	unnecessary stipulation, to the extent
15	-- or we can give you a call back --	15	that there are objections that should
16	the Judge's ruling later. But if you	16	have been asserted to the subpoena.
17	could describe the dispute to me now?	17	And we have not raised them. We
18	MR. KESHAVARZ: So, this is in	18	haven't raised them. So, I'm not
19	Bueno versus LR Credit. And the issue	19	really sure why this is even necessary.
20	is, we noticed the deposition of a	20	MR. MILLS: This is Ben Mills --
21	non-party witness named Todd Fabacher.	21	LAW SECRETARY: Okay.
22	We noticed it for both this case and a	22	MR. MILLS: -- LR Credit 18. And
23	parallel case in the Southern District	23	I have the -- join of Mr. Lichtman's
24	named Guzman versus LR Credit. We	24	comments.
25	noticed it to be held jointly. The	25	LAW SECRETARY: Sorry? I couldn't

<p>13</p> <p>1 T. FABACHER</p> <p>2 quite hear you.</p> <p>3 MR. MILLS: Benjamin Mills,</p> <p>4 representing LR Credit 18, another</p> <p>5 defendant in this action. And I join</p> <p>6 Mr. Lichtman's comments in full.</p> <p>7 LAW SECRETARY: Okay. You think</p> <p>8 it's unnecessary to stipulate for the</p> <p>9 deposition testimony. But you agree</p> <p>10 that it was set -- it was noticed in</p> <p>11 the way that plaintiff's attorney</p> <p>12 describes it?</p> <p>13 MR. MILLS: Well, I would say -- I</p> <p>14 don't know -- jointly means -- We</p> <p>15 received two notices. One in this</p> <p>16 action, one in Guzman. So, we received</p> <p>17 two notices for the deposition. And I</p> <p>18 agree there's no need. And it's --</p> <p>19 (inaudible) -- making would do.</p> <p>20 LAW SECRETARY: Okay.</p> <p>21 Can I get a call-back number?</p> <p>22 MR. KESHAVARZ: Yes. Let me give</p> <p>23 you the number where we are at right</p> <p>24 now. It is 347-308-4859.</p> <p>25 LAW SECRETARY: Okay.</p>	<p>15</p> <p>1 T. FABACHER</p> <p>2 MR. KESHAVARZ: Go ahead.</p> <p>3 LAW SECRETARY: No. Continue.</p> <p>4 MR. KESHAVARZ: Oh. I was going</p> <p>5 to -- I was going to call Magistrate</p> <p>6 Ellis next to get a parallel ruling but</p> <p>7 we can hold off on that.</p> <p>8 I guess the question is, how long</p> <p>9 do you think it might take to call</p> <p>10 back? Not to be pushy. But I'm -- I</p> <p>11 just need to call the other magistrate.</p> <p>12 So, that's why I was --</p> <p>13 LAW SECRETARY: Yeah. It's --</p> <p>14 it's just tough to say. The Judge is</p> <p>15 going now to take a plea. But -- she's</p> <p>16 on criminal duty. So, it sort of</p> <p>17 depends on how much stuff they have</p> <p>18 down there. And it's never clear to us</p> <p>19 up here how much they'll have.</p> <p>20 MR. KESHAVARZ: Okay. All right.</p> <p>21 Well, thank you very much.</p> <p>22 LAW SECRETARY: Sure. No problem.</p> <p>23 MR. KESHAVARZ: Bye-bye.</p> <p>24 LAW SECRETARY: Okay.</p> <p>25 (Thereupon, the telephone ruling</p>
<p>14</p> <p>1 T. FABACHER</p> <p>2 And what's the docket number on</p> <p>3 this case, and then the one in the</p> <p>4 SDNY?</p> <p>5 MR. KESHAVARZ: One moment,</p> <p>6 please.</p> <p>7 Pardon me (retrieves documents</p> <p>8 from in front of Mr. Fabacher).</p> <p>9 THE WITNESS: That's all right.</p> <p>10 Oh, I thought these were mine.</p> <p>11 MR. KESHAVARZ: For the one in the</p> <p>12 Eastern District before your</p> <p>13 magistrate, it is 16-CV-4737. And in</p> <p>14 the --</p> <p>15 LAW SECRETARY: Okay.</p> <p>16 MR. KESHAVARZ: -- Southern</p> <p>17 District, it is 16-CV-3499.</p> <p>18 LAW SECRETARY: Okay.</p> <p>19 What -- who -- which magistrate on</p> <p>20 that?</p> <p>21 MR. KESHAVARZ: Oh, that's</p> <p>22 Magistrate Ellis.</p> <p>23 LAW SECRETARY: Ellis. Okay.</p> <p>24 MR. KESHAVARZ: And we're --</p> <p>25 LAW SECRETARY: Umm --</p>	<p>16</p> <p>1 T. FABACHER</p> <p>2 concluded.)</p> <p>3 (Whereupon, a telephone call was</p> <p>4 made to the Chambers of the Hon. Vera</p> <p>5 M. Scanlon, Magistrate, and the</p> <p>6 following proceedings were had.)</p> <p>7 MR. KESHAVARZ: All right. Now,</p> <p>8 I'm calling the Chambers of Magistrate</p> <p>9 Ellis in the Guzman case.</p> <p>10 LAW SECRETARY: Good afternoon</p> <p>11 (inaudible).</p> <p>12 MR. KESHAVARZ: Good afternoon.</p> <p>13 This is Ahmad Keshavarz, the attorney</p> <p>14 for the plaintiff in Guzman versus LR</p> <p>15 Credit. We're currently on the record</p> <p>16 in a deposition. And I can get off the</p> <p>17 record if you would like me to.</p> <p>18 But we have a deposition -- a</p> <p>19 dispute in a deposition that we need a</p> <p>20 ruling on.</p> <p>21 LAW SECRETARY: Hold on. For what</p> <p>22 cases?</p> <p>23 MR. KESHAVARZ: Yes. The case is</p> <p>24 Guzman versus LR Credit, et al., Index</p> <p>25 Number 16-CV-3499.</p>

17

1 T. FABACHER  
 2 LAW CLERK: Chambers of Judge  
 3 Ellis.  
 4 MR. KESHAVARZ: Good afternoon,  
 5 this is Ahmad Keshavarz, the plaintiff  
 6 -- attorney for the plaintiff in Guzman  
 7 versus LR Credit. We are currently on  
 8 the record in a deposition. I can take  
 9 us off the record immediately, if you  
 10 would like.  
 11 But we have a deposition dispute  
 12 that we need the magistrate to rule on,  
 13 please.  
 14 LAW CLERK: Okay. Okay. Well,  
 15 I'll take notes first. And then I'll  
 16 give the background to the judge. And  
 17 the judge will get on the phone with  
 18 you all.  
 19 MR. KESHAVARZ: Okay.  
 20 LAW CLERK: So, what is the  
 21 dispute?  
 22 MR. KESHAVARZ: The dispute is  
 23 that we noticed the deposition --  
 24 LAW CLERK: Plaintiff?  
 25 MR. KESHAVARZ: -- plaintiff

18

1 T. FABACHER  
 2 noticed the deposition of a non-party  
 3 witness named Todd Fabacher. We  
 4 noticed it at the same time for this  
 5 the case and a parallel case with  
 6 essentially --  
 7 LAW CLERK: The one in the Eastern  
 8 District?  
 9 MR. KESHAVARZ: Exactly. That one  
 10 is Bueno versus LR Credit.  
 11 And I thought we had an agreement  
 12 that we could use the single deposition  
 13 transcript for the same non-party  
 14 witness in both cases. And that was my  
 15 understanding.  
 16 But on the record, the defense  
 17 attorneys will not stipulate to that.  
 18 And they want to reserve the right to  
 19 make whatever objections to the  
 20 deposition transcript they'd like at a  
 21 future point, although they haven't  
 22 served any objections up to now. So,  
 23 the request for relief is an order from  
 24 the magistrate that I can use this  
 25 deposition transcript in both the

19

1 T. FABACHER  
 2 Guzman case and the Bueno case.  
 3 And we have a request for that  
 4 same relief to the magistrate in Bueno.  
 5 So, I'm trying to get an order from  
 6 both of the magistrates that I can use  
 7 one transcript for both cases. Or else  
 8 I have to take the same deposition, and  
 9 ask the same set of questions twice  
 10 which is going to be a waste of  
 11 everyone's time.  
 12 MR. LICHTMAN: So --  
 13 LAW CLERK: Okay. And this is  
 14 something that you need to have  
 15 resolved right now?  
 16 MR. KESHAVARZ: Yes, or else we're  
 17 going to waste everyone's -- I'm going  
 18 to have to ask two sets of questions.  
 19 And I don't want to have to do that.  
 20 And nobody -- so, that's the reason why  
 21 I think the answer is yes.  
 22 And now the other attorneys want  
 23 to say something.  
 24 All right.  
 25 MR. LICHTMAN: Yes. Hi. This is

20

1 T. FABACHER  
 2 Jeffrey Lichtman representing  
 3 defendants Samserv and Mlotok in the  
 4 Guzman case.  
 5 I just see this as unnecessary.  
 6 And we have -- there have been  
 7 subpoenas that were served on the  
 8 witness in both cases. Notices that  
 9 were served on the witness in both  
 10 cases. We have had an opportunity to  
 11 object, and we haven't objected.  
 12 So, as far as I'm concerned, these  
 13 are depositions that are taken pursuant  
 14 to subpoenas in each of the two cases.  
 15 I don't know why it's even necessary  
 16 for me to stipulate about the use in  
 17 each case -- hasn't been an issue. And  
 18 I'm not sure how they might be used,  
 19 that I might then later object to. But  
 20 the fact that they're being taken  
 21 simultaneously is not something I'm  
 22 objecting to.  
 23 So, I just see this as totally  
 24 unnecessary, respectfully, to ask for a  
 25 stipulation in the course of the

5 (Pages 17 to 20)

21

1 T. FABACHER  
 2 deposition, when the deposition is  
 3 designed to ask questions of the  
 4 witness we're here attending. And it's  
 5 pursuant to subpoenas in two different  
 6 cases without objection.  
 7 LAW CLERK: Okay.  
 8 MR. MILLS: And this is --  
 9 LAW CLERK: So --  
 10 MR. MILLS: -- sorry -- this is  
 11 Benjamin Mills representing LR Credit  
 12 13, a co-defendant. I would just like  
 13 to join Mr. Lichtman's comments in  
 14 full.  
 15 LAW CLERK: Okay. So, what is the  
 16 actual dispute then -- (inaudible) --  
 17 is it -- that they don't feel the need  
 18 to have to stipulate to the use because  
 19 you're not objecting to the deposition  
 20 being simultaneously --  
 21 MR. KESHAVARZ: I believe their  
 22 position -- they can speak for  
 23 themselves -- but I believe their  
 24 position is that they want to be able  
 25 to reserve the right at a future point

22

1 T. FABACHER  
 2 to -- objecting to the use of a single  
 3 transcript for both cases.  
 4 That's -- that's my understanding,  
 5 that they want to reserve that right  
 6 for that objection. So, if they're  
 7 reserving that right, I -- I would like  
 8 to get that resolved at the front end  
 9 or else I might need to ask two sets of  
 10 the same questions which is going to  
 11 waste everyone's time.  
 12 MR. LICHTMAN: Well, no, that's --  
 13 that's actually not my objection. My  
 14 objection is the broad term of the word  
 15 using the deposition in both cases.  
 16 This -- this applies in each of  
 17 the two cases. I have no problem with  
 18 that.  
 19 I -- but, you know, to begin the  
 20 deposition asking for a stipulation  
 21 about the prospective use of the  
 22 deposition when we haven't objected to  
 23 anything is unnecessary. And I'm not  
 24 really sure what I'm being asked to  
 25 agree to.

23

1 T. FABACHER  
 2 I mean, in point of fact, one  
 3 deposition -- one case has a protective  
 4 order ordered by the judge. Another  
 5 case has a stipulation not yet ordered  
 6 by the judge. There are two different  
 7 avenues there.  
 8 But I'm not objecting to the  
 9 simultaneous asking in -- of -- of  
 10 questions. I'm not objecting to one  
 11 transcript being generated in both  
 12 cases.  
 13 If -- if that's the question, I --  
 14 I will stipulate that this one  
 15 transcript refers to both cases  
 16 pursuant to the subpoena. That's fine.  
 17 But the broad term of use, I -- I  
 18 -- right now, I'm not sure what I'm  
 19 being asked to agree to. And I just  
 20 think it's -- I -- I -- I do think it's  
 21 unnecessary.  
 22 MR. MILLS: And I agree with Mr.  
 23 Lichtman.  
 24 LAW CLERK: Okay.  
 25 MR. KESHAVARZ: So, I guess --

24

1 T. FABACHER  
 2 LAW CLERK: Do you have anything  
 3 to say to that?  
 4 MR. KESHAVARZ: -- I guess the  
 5 dispute is, what the word use means.  
 6 They don't understand what I mean by  
 7 the use of this transcript in both  
 8 depositions.  
 9 So, that's the issue. Can I use  
 10 this deposition in both cases? If  
 11 they'll say the answer is yes, then  
 12 we're good.  
 13 Can we use this transcript for  
 14 both cases or not?  
 15 MR. LICHTMAN: I am fine with you  
 16 using this deposition as you would a  
 17 subpoenaed non-party deposition. To  
 18 the extent that it might have other  
 19 infirmities to it, I reserve my right  
 20 to object.  
 21 But to the extent that you're  
 22 saying is -- is two different subpoenas  
 23 being served on one witness for one day  
 24 valid in both cases, I'm okay with  
 25 that. And I have never voiced an

6 (Pages 21 to 24)

25

1 T. FABACHER  
 2 objection to that.  
 3 MR. MILLS: Agree.  
 4 MR. KESHAVARZ: All right. I  
 5 think that resolves our dispute then.  
 6 LAW CLERK: Okay. So, you don't  
 7 need the judge?  
 8 MR. KESHAVARZ: No. But  
 9 apparently you being on the phone  
 10 helped facilitate everything. So, I  
 11 appreciate your time.  
 12 LAW CLERK: Of course.  
 13 MR. KESHAVARZ: Thank you.  
 14 LAW CLERK: Have a good one.  
 15 MR. KESHAVARZ: Bye-bye.  
 16 (Thereupon, the telephone ruling  
 17 concluded and the following proceedings  
 18 were had.)  
 19 (Whereupon, an off-the-record  
 20 discussion was held.)  
 21 MR. KESHAVARZ: On the record, my  
 22 Law Clerk is calling Judge Scanlon's  
 23 Chambers to withdraw the issue for a  
 24 ruling.  
 25 Q. Now --

26

1 T. FABACHER  
 2 A. Yes, sir.  
 3 Q. Let's start from the beginning,  
 4 sir. Again, I do thank you for your time.  
 5 A. Yes.  
 6 Q. During the course of the  
 7 deposition, your attorney might make an  
 8 objection, particularly an objection to  
 9 form. But unless you're instructed  
 10 otherwise, you're still required to answer  
 11 the question. Do you understand that?  
 12 A. Yeah, I'll answer as best I can.  
 13 Q. But do you understand if he says  
 14 objection to form that you're still required  
 15 to answer?  
 16 A. That's correct.  
 17 Q. All right.  
 18 (Whereupon, an off-the-record  
 19 discussion was held.)  
 20 Q. That was the next thing that I was  
 21 about to ask. Because the court reporter's  
 22 scowling at me. But anyway, my --  
 23 A. That's not a problem.  
 24 Q. -- my point being, I'm going to  
 25 ask a question. Will you attempt to

27

1 T. FABACHER  
 2 articulate an answer as opposed to nodding  
 3 your head or shaking your head? Will you  
 4 do --  
 5 A. Yes, as best I can.  
 6 Q. Okay. And it's also normal for  
 7 someone to anticipate the end of the  
 8 question and begin answering it. But so the  
 9 court reporter has a clear record, will you  
 10 please try to wait until I'm done with the  
 11 question before answering it?  
 12 A. Yes.  
 13 Q. Okay. If you don't understand any  
 14 of my questions, will you please ask me to  
 15 rephrase it?  
 16 A. I will.  
 17 Q. If I ask you a question and you  
 18 don't ask me to rephrase it, is it  
 19 reasonable for me to assume that you  
 20 understood the question?  
 21 MR. SCHER: Note my objection.  
 22 A. Can you repeat that?  
 23 Q. Sure.  
 24 A. I'm slow.  
 25 Q. Take your time.

28

1 T. FABACHER  
 2 A. Okay.  
 3 Q. If I ask you a question and you  
 4 don't ask me to rephrase it or clarify it,  
 5 is it reasonable for me to assume that you  
 6 understood the question?  
 7 MR. SCHER: Same objection.  
 8 You can answer.  
 9 A. Okay.  
 10 Q. All right. And that's one of the  
 11 examples of an objection I was referring to.  
 12 A. I understand.  
 13 Q. Now, have you ever had your  
 14 deposition taken before?  
 15 A. Yes.  
 16 Q. How many times?  
 17 A. Twice.  
 18 Q. Was one of those -- one of those  
 19 times in the Sykes, S-Y-K-E-S, class action  
 20 lawsuit?  
 21 A. Yes.  
 22 Q. Approximately, how long was that  
 23 deposition?  
 24 A. I don't remember.  
 25 Q. All day?

7 (Pages 25 to 28)

29

1 T. FABACHER  
 2 A. Yes.  
 3 Q. Felt like three days?  
 4 A. No, it was good.  
 5 Q. All right. And what was the other  
 6 case that you were deposed in?  
 7 A. It was two days for the same case.  
 8 MR. SCHER: Sykes?  
 9 THE WITNESS: Sykes, yeah.  
 10 A. But there was two days. Actually,  
 11 it was two days.  
 12 Q. It didn't just feel like two days?  
 13 It actually --  
 14 A. It actually was two days. Because  
 15 we had -- just like here, we had a lot of  
 16 delays. So --  
 17 Q. All right.  
 18 A. -- it turned into two days.  
 19 Q. All right. Fair enough. Now,  
 20 have you ever been known by any other name  
 21 other than Todd Fabacher?  
 22 A. No.  
 23 Q. Am I pronouncing your name  
 24 correctly?  
 25 A. Yes, you are actually. Thank you.

30

1 T. FABACHER  
 2 Q. Okay. I'm doing my best.  
 3 (Perusing document.)  
 4 Now, looking at Exhibits 1 and 2,  
 5 the subpoenas to testify at the deposition,  
 6 if you turn your attention to the  
 7 next-to-last page of both, in Exhibit A --  
 8 well, let's take them one at a time.  
 9 Exhibit A -- excuse -- Exhibit A attached to  
 10 Plaintiff's Exhibit 1 which is the Guzman  
 11 subpoena asks for three sets of documents;  
 12 is that correct?  
 13 A. (Perusing document.)  
 14 Can I read it?  
 15 Q. Please take your time.  
 16 (Whereupon, an off-the-record  
 17 discussion was held.)  
 18 A. No, I -- I --  
 19 MR. SCHER: No. There's no  
 20 question.  
 21 Q. Were you about to say something?  
 22 A. No, no. I said I read it.  
 23 Q. Okay. Did you do a search for  
 24 each of the three items listed in Exhibit A  
 25 to deposition three -- deposition Exhibit 1

31

1 T. FABACHER  
 2 -- Guzman affidavit. Did you look for those  
 3 documents?  
 4 A. I have no documents.  
 5 Q. I understand that. But did you  
 6 look? Did you try to obtain the documents  
 7 that are listed in Exhibit A of Plaintiff's  
 8 Exhibit 1?  
 9 MR. LICHTMAN: Objection.  
 10 A. Yeah, I . . .  
 11 MR. SCHER: You can answer.  
 12 A. Yes. I looked around the room,  
 13 and I didn't see them. I mean how -- how do  
 14 I look for -- where? -- I also looked --  
 15 Sykes case for the e-mail, and I had no  
 16 attachments.  
 17 Q. Well, that's what I was trying to  
 18 ask.  
 19 A. Oh, okay. So no, I -- I -- I did  
 20 not find anything.  
 21 Q. Okay. I'm just asking you what  
 22 search you took. Was one search you took to  
 23 determine if the -- documents responsive to  
 24 Exhibit A in the Guzman subpoena, one step  
 25 you took was to look at e-mails, correct?

32

1 T. FABACHER  
 2 A. Yes. I have -- yes. I have  
 3 nothing.  
 4 Q. Okay. And -- that be true for  
 5 Exhibit A in the subpoena in the Bueno case?  
 6 A. Can I read it?  
 7 Q. Take your time.  
 8 A. (Perusing document.)  
 9 Yes, I did search and I found  
 10 nothing.  
 11 Q. Okay. So, let me just clarify  
 12 because I started with one subpoena and I  
 13 should have just done both. So, for both  
 14 the Bueno subpoena and the Guzman subpoena,  
 15 you did a search for responsive documents to  
 16 both of the Exhibit A's in the subpoenas,  
 17 right?  
 18 A. That's correct.  
 19 Q. Okay. And you were unable to  
 20 obtain or to discover documents responsive  
 21 to either subpoena, correct?  
 22 A. That's correct.  
 23 Q. Okay. And one step you took was  
 24 to check your e-mails, correct?  
 25 A. Correct.

8 (Pages 29 to 32)

33

1 T. FABACHER  
 2 Q. What is your e-mail address?  
 3 A. Tfabacher@gmail.com.  
 4 Q. Is that the only e-mail address  
 5 that you use?  
 6 A. Yes. It's my personal e-mail.  
 7 Q. Do you have any other e-mail  
 8 addresses that you use?  
 9 A. Yes, I do. I have  
 10 tfabacher@digitalpomegranate.com.  
 11 Q. Any other e-mail addresses --  
 12 A. No.  
 13 Q. -- that you use?  
 14 A. That's it.  
 15 Q. Okay. Have you used any other  
 16 e-mail addresses from 2011 to the present?  
 17 A. No. Those would be the only two  
 18 e-mails that I've used.  
 19 Q. Okay. And did you get e-mail --  
 20 A. No, that's it.  
 21 Q. -- did you get e-mail  
 22 correspondence regarding the Sykes case on  
 23 your Gmail account?  
 24 A. Yes.  
 25 Q. Did you get e-mail correspondence

34

1 T. FABACHER  
 2 regarding the Sykes case on your Digital  
 3 Pomegranate account?  
 4 A. Never.  
 5 Q. Okay. And do you know how long  
 6 your Gmail is retained? The e-mails.  
 7 A. I delete everything over a year  
 8 always.  
 9 Q. Do you manually do that?  
 10 A. Yes.  
 11 Q. And why do you do that?  
 12 A. I do it always.  
 13 Q. Is there any particular reason?  
 14 A. It's -- it's -- I use the free  
 15 account in my -- I size up. And they always  
 16 tell me I'm running out of space. So, I  
 17 just take everything from a year over and  
 18 delete it.  
 19 Q. All right.  
 20 A. Because I don't want to pay.  
 21 Q. Okay. And do you use Outlook  
 22 generally for your Gmail account?  
 23 A. Never.  
 24 Q. You never download any of your  
 25 e-mails onto a hard drive?

35

1 T. FABACHER  
 2 A. Never.  
 3 Q. Or download it onto a cloud  
 4 somewhere?  
 5 A. Never.  
 6 Q. Okay.  
 7 A. On my phone, on my iPhone.  
 8 Q. Okay. Do you have e-mails that go  
 9 back to 2012 in your Gmail account?  
 10 A. I said I -- I have -- everything  
 11 over a year has been deleted. But I can't  
 12 -- I wouldn't know a hundred percent but I  
 13 would think not because that would have been  
 14 deleted.  
 15 Q. Okay.  
 16 A. So, I'm going to speculate no.  
 17 Q. All right. Do you have your phone  
 18 with you today?  
 19 A. I do.  
 20 Q. During the -- during a break, can  
 21 you just see if you have any e-mails that go  
 22 back that far, 2012. And then we could take  
 23 the next step and see --  
 24 A. I would prefer to do it on my  
 25 computer. I don't prefer to do it on the

36

1 T. FABACHER  
 2 phone because that -- the phone doesn't show  
 3 you everything. So, I -- that's my  
 4 preference.  
 5 Q. Well, I know. But I'm trying to  
 6 get this done.  
 7 MR. SCHER: He's already testified  
 8 that he searched his e-mails and had  
 9 nothing related to the Sykes case. So,  
 10 I don't know where you're going with  
 11 this continued questioning about having  
 12 him go and look again to see if he has  
 13 anything from 2012.  
 14 Q. When you say you searched your  
 15 Gmail account, do you mean you searched it  
 16 on a computer browser?  
 17 A. That's correct.  
 18 Q. You didn't search it on your  
 19 phone?  
 20 A. Did not.  
 21 Q. Your phone has Gmail e-mails going  
 22 further back than your browser, correct?  
 23 A. No. It's on the cloud. The --  
 24 it's everything -- from my understanding,  
 25 the phone does not retain anything. It's --

9 (Pages 33 to 36)

37

1 T. FABACHER  
 2 Gmail is not -- it's cloud-based, from my  
 3 understanding.  
 4 Q. Well, can you just check your cell  
 5 phone now and see if you have Gmail e-mails  
 6 going back to 2012?  
 7 MR. SCHER: No, he can't.  
 8 A. As I said, I wouldn't -- I would  
 9 not because I'm not -- you know, I would  
 10 prefer to do it on my desktop.  
 11 Q. Some of the e-mails --  
 12 A. You're asking me to testify  
 13 whether -- on grounds of perjury whether I  
 14 have a -- an -- a -- an e-mail from 2012.  
 15 And I'm telling you the iPhone is not  
 16 sufficient to do that. I would -- if you  
 17 want me to -- to testify, I would want to do  
 18 it on my -- on my desktop.  
 19 Q. So, are you saying that some of  
 20 your Gmail e-mails from 2012 may have been  
 21 downloaded onto your computer?  
 22 A. No. I do not download the  
 23 e-mails.  
 24 Q. Okay. So, when you say you would  
 25 want to look on your desktop, you mean to

38

1 T. FABACHER  
 2 look on your desktop to go through the Gmail  
 3 browser on the website? On the Gmail  
 4 website? Is that what you mean?  
 5 A. I'd prefer -- that would be  
 6 correct.  
 7 Q. Okay. Would there be anything  
 8 else that you would do on your home computer  
 9 to check if there any Gmail e-mails from  
 10 2012 that you couldn't do on your phone or  
 11 somewhere else?  
 12 A. Well, again, I don't have -- I'm  
 13 not going to -- to access my -- my personal  
 14 e-mail right now from -- from here. Because  
 15 for purposes -- for security purposes, I'm  
 16 not willing to do that unless I'm -- unless  
 17 I'm subpoenaed to -- forced to.  
 18 Q. Well, how would you go about doing  
 19 that?  
 20 A. I would do it on my home computer.  
 21 Q. No, but you -- I believe you said  
 22 something about accessing it from my phone.  
 23 Maybe I misunderstood. Is there a way to  
 24 access those e-mails here, from here? Is  
 25 there -- put aside the issue about whether

39

1 T. FABACHER  
 2 you would want to or not. Is there a way to  
 3 access Gmail --  
 4 A. Well, then I would have to give  
 5 you my personal security on your computer.  
 6 And I'm -- personally, I am not willing to  
 7 do that.  
 8 Q. I'm not asking you to do that at  
 9 this point. I --  
 10 A. Yes, you are. Because for me to  
 11 log in here, I would have to give you on one  
 12 of your computers access to my user name and  
 13 password.  
 14 Q. User name and password to what?  
 15 A. To the Gmail account. You cannot  
 16 access your Gmail account without a user  
 17 name or a password.  
 18 Q. Well, I guess what I'm trying to  
 19 figure out is, if you accessed your Gmail  
 20 account from your home computer, is there  
 21 anything that makes you think that you may  
 22 have Gmail e-mails from 2012?  
 23 A. No.  
 24 Q. Thank you.  
 25 Do you recall if your deposition

40

1 T. FABACHER  
 2 transcript was e-mailed to you in the Sykes  
 3 case?  
 4 A. I searched -- I do not recall if  
 5 it was searched. But I did check. I did  
 6 seek for the Sykes case and I did not find  
 7 it.  
 8 Q. My question is, do you recall --  
 9 A. I said no. I said no. And I  
 10 searched. I'm sorry. I apologize.  
 11 Q. No, that's okay. You're doing  
 12 what's normal, particularly in New York, is  
 13 that you're anticipating what I'm going to  
 14 ask and --  
 15 A. Well, you asked. And -- and I  
 16 said no. And then you said -- you -- you --  
 17 you contradicted what I said.  
 18 Q. I'm just trying to ask you then --  
 19 I think -- I think you answered a different  
 20 question than what I'm asking. But --  
 21 A. Okay.  
 22 Q. -- in any case, let me just ask  
 23 the question specifically.  
 24 A. Okay.  
 25 Q. Even if you do not have your Gmail

10 (Pages 37 to 40)

41

1 T. FABACHER  
2 accounts today from 2012, do you remember  
3 one way or the other whether at some point  
4 you saw your deposition transcript on Gmail?  
5 A. No.  
6 Q. Did you review your deposition  
7 transcript in the Sykes case?  
8 A. I did.  
9 Q. And did you have an opportunity to  
10 make changes to that deposition testimony?  
11 A. I -- no.  
12 Q. Okay. Did you -- whether after  
13 reading it, did you believe that there were  
14 any changes that you needed to make to make  
15 your answers fully truthful?  
16 A. I don't recall. But I do not  
17 remember making any exceptions.  
18 Q. Thank you.  
19 So, let's go to your background a  
20 little bit. Did you go to college?  
21 A. I did.  
22 Q. And where did you go?  
23 A. Miami University. It's at Miami  
24 of Ohio.  
25 Q. Did you get a degree there?

42

1 T. FABACHER  
2 A. I did.  
3 Q. What was your degree in?  
4 A. BA in Political Science and  
5 Industrial Engineering.  
6 Q. And did you get any other  
7 education after college?  
8 A. No.  
9 Q. No graduate school?  
10 A. No.  
11 Q. Any other formal training  
12 particularly in terms of the use of computer  
13 programming?  
14 A. No.  
15 Q. What do you do now?  
16 A. I write computer software.  
17 Q. And how did you learn to write  
18 computer software?  
19 A. I taught myself.  
20 Q. Over how long of a period of time  
21 were you learning to write computer  
22 software?  
23 A. You -- I -- well, you have to ask  
24 a particular question. Like -- you know,  
25 there's so -- aspects -- how -- how long

43

1 T. FABACHER  
2 have you done -- be an attorney? It's --  
3 it's constant. So, I don't know. Since --  
4 I would probably -- if you want when I  
5 started programming?  
6 Q. Yes.  
7 A. I started programming in 1995.  
8 Q. Okay. And in what capacity did  
9 you start programming?  
10 A. I picked up a book and started  
11 learning.  
12 Q. Okay. Did you work for someone  
13 when you started doing computer programming?  
14 A. No, I worked for myself.  
15 Q. Okay. So beginning in 1995, what  
16 did you do in terms of computer programming?  
17 A. I'm sorry?  
18 Q. Beginning in 1995 when you -- let  
19 me -- back it up. When did you graduate  
20 from college?  
21 A. In 1989.  
22 Q. And what did you do after you  
23 graduated from college?  
24 A. I went to work -- directly out of  
25 college? I went -- moved to Denver, and

44

1 T. FABACHER  
2 sold PC's.  
3 Q. What did you do next?  
4 A. I bought a one-way ticket to  
5 Taiwan.  
6 Q. What did you do in Taiwan?  
7 A. I -- I don't remember. I -- I was  
8 bumming around. I don't know -- taught  
9 English, you know. What else did I do.  
10 That's basically it. Just bums --  
11 Q. That's fine.  
12 A. Yeah.  
13 Q. So, about how long were you in  
14 Taiwan for?  
15 A. Well, I -- I was everywhere.  
16 Q. You were traveling around?  
17 A. Yeah, just traveling around.  
18 Q. Okay. Did you get a job after you  
19 were traveling around?  
20 A. Yes. I -- I worked for a year,  
21 one year, in Kuala Lumpur, Malaysia.  
22 Q. About when was that? Roughly,  
23 what year?  
24 A. I don't remember.  
25 Q. About how old were you?

11 (Pages 41 to 44)

45

1 T. FABACHER  
 2 A. I'm trying to think, man. That  
 3 was so long ago. I'm an old guy. All  
 4 right. So, that was in 1992 maybe --  
 5 nineteen ninety -- no, that was 1995.  
 6 Nineteen -- 1995.  
 7 Q. And not to ask an offensive  
 8 question, but I'm going to ask how old you  
 9 are now?  
 10 A. I am 50.  
 11 Q. Okay. You look mighty good for  
 12 50, I have to say.  
 13 A. Well, my wife -- she's  
 14 complaining. I got a gym membership for my  
 15 birthday.  
 16 Q. Sir, what did you do beginning in  
 17 1995 in --  
 18 A. That's when I started programming.  
 19 Q. Okay. You started working for  
 20 yourself in programming?  
 21 A. Yes. And there was a company in  
 22 Malaysia. The name of it is I & J -- I,  
 23 ampersand, J -- LLC.  
 24 Q. And you worked for yourself, and  
 25 did work for them?

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1 T. FABACHER  
 2 A. Yes. Yes, they -- that's where I  
 3 decided to be a programmer. And I worked  
 4 basically for free. And they taught me how  
 5 to -- you know -- in a sense, I started on  
 6 my own. And I would just sit in the office,  
 7 and just kind of hang out.  
 8 Q. What type of programming did you  
 9 do there?  
 10 A. DBase.  
 11 Q. And just in layman's terms, what  
 12 is that?  
 13 A. It's a database. It's a -- it's  
 14 called D, just the letter D, B-A-S-E.  
 15 Q. And how long did you do that for?  
 16 A. About -- about a year.  
 17 Q. And then what did you do after  
 18 that?  
 19 A. I went to -- I met a -- a girl.  
 20 And then I moved to Pune, India.  
 21 Q. Okay. And how long were you in  
 22 Pune, India for?  
 23 A. For about five months.  
 24 Q. What did you do there?  
 25 A. Hung out.

47

1 T. FABACHER  
 2 Q. Okay.  
 3 A. I did a lot of hanging out.  
 4 Q. That's fine. It's nice. I'm  
 5 jealous.  
 6 A. Yeah. So -- yes.  
 7 Q. That's around 1996?  
 8 A. Well, yes, pretty close.  
 9 Q. All right. And then what did you  
 10 do after that?  
 11 A. Then I met a -- a gentleman at a  
 12 party who said he wants to create day spas  
 13 around the world. He wanted to change the  
 14 world.  
 15 Q. Okay. So, you were involved in  
 16 that somehow?  
 17 A. Yeah. He said he -- he's, like,  
 18 let's do a software together.  
 19 Q. And is that what you did?  
 20 A. That's what I did.  
 21 Q. In layman's terms, when you say  
 22 did software together, what do you mean?  
 23 A. So, he is a company. He wanted to  
 24 write a software to manage hair salons and  
 25 spas.

48

1 T. FABACHER  
 2 Q. I see. And how long did you do  
 3 that for?  
 4 A. I did that from 1996 possibly --  
 5 '95 -- I'm not sure -- I -- I can't remember  
 6 -- no, I --  
 7 Q. Roughly speaking?  
 8 A. Maybe '96 to 2000.  
 9 Q. Right around there?  
 10 A. Yeah.  
 11 Q. All right. Did you do any other  
 12 programming other than for the day spa?  
 13 A. No, that was it.  
 14 Q. That was your full-time job?  
 15 A. That was it.  
 16 Q. From '96 to 2000?  
 17 A. Yes.  
 18 Q. What did you do after that?  
 19 A. I moved to New York.  
 20 Q. What did you do when you moved to  
 21 New York?  
 22 A. I programmed.  
 23 Q. Who did you program for?  
 24 A. A company named Borrels. I don't  
 25 know how to spell it.

12 (Pages 45 to 48)

49

1 T. FABACHER  
 2 Q. And how long did you do computer  
 3 programming for Borrels when you came to New  
 4 York around 2000?  
 5 A. I don't know. Maybe a year and a  
 6 half.  
 7 Q. Okay. And in layman's terms, when  
 8 you say you did programming for Borrels,  
 9 give me a general idea about what you mean  
 10 by that, please?  
 11 A. Programming. I -- I don't know  
 12 how else to describe it.  
 13 Q. Programming and managing a  
 14 database -- information?  
 15 A. No, I did not manage a database.  
 16 So, it's programming which is coding --  
 17 Q. Okay. Coding to do what?  
 18 A. To show news clips.  
 19 Q. In what way? Like, search the  
 20 Internet and pull together news clips, or --  
 21 what do you mean?  
 22 A. Well, I -- wasn't my part.  
 23 Someone else did that. I just showed them  
 24 on the screen.  
 25 Q. And what do you mean by that?

50

1 T. FABACHER  
 2 A. So, they -- so, when they --  
 3 someone would download a news clip. And  
 4 then we would write -- we wrote a -- a --  
 5 what's called a text reader.  
 6 Q. Okay.  
 7 A. So, if someone is looking for a  
 8 key word out of a news clip, like -- you  
 9 know, like, David Bowie, okay? So, then  
 10 they would scan the image. And it would  
 11 turn it into a text file. And I wrote the  
 12 software to look for David Bowie.  
 13 Q. So, that was before the time when  
 14 newspaper articles were largely text on the  
 15 Internet?  
 16 A. That's right.  
 17 Q. So, there were --  
 18 A. Just getting started. You know,  
 19 2000.  
 20 Q. So, they're physically newspaper  
 21 articles scanned. And then you would have  
 22 some sort of optical reader that would break  
 23 down the text into words? The search.  
 24 A. It wasn't my -- that's not what I  
 25 did. So, I don't -- I'm assuming that's

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1 T. FABACHER  
 2 what they did. They -- they gave me the  
 3 text. I'm not -- I -- I believe that's what  
 4 they did but that wasn't my function.  
 5 Q. Your function was, again -- I'm  
 6 sorry --  
 7 A. Yeah.  
 8 Q. -- specifically make it so the  
 9 text -- the articles are searchable?  
 10 A. No. I did not do that. I  
 11 searched -- I wrote the codes to search the  
 12 text.  
 13 Q. All right. Did you do any other  
 14 major work when you were at Borrels for a  
 15 year and a half beginning in 2000?  
 16 A. No. That was pretty much it.  
 17 That's what they did. They were a clipping  
 18 service.  
 19 Q. Okay. So, what did you do after  
 20 you left Borrels? Was that your -- let me  
 21 do one step at a time. Was Borrels a  
 22 full-time job?  
 23 A. Yes.  
 24 Q. Did you have any other major jobs  
 25 during that time you worked with Borrels?

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1 T. FABACHER  
 2 A. No.  
 3 Q. What did you do after Borrels?  
 4 A. I worked for the law office of Mel  
 5 Harris.  
 6 Q. And that would be around 2001,  
 7 2002?  
 8 A. It was actually 9/11. So, it  
 9 would be probably two thousand -- I don't  
 10 remember exactly the date.  
 11 Q. So, sometime in 2012 (sic), you  
 12 think?  
 13 A. 2002.  
 14 Q. Oh. 2002. Excuse me.  
 15 A. Yeah. Sure.  
 16 Q. And how did you come about to get  
 17 that job?  
 18 A. I applied.  
 19 Q. How did you find out about the  
 20 position?  
 21 A. A friend had said someone was  
 22 looking for something.  
 23 Q. All right. And how long did you  
 24 work at Mel Harris?  
 25 A. I don't even remember when I left.

13 (Pages 49 to 52)

53

1 T. FABACHER  
 2 It was a number of years ago.  
 3 Q. Did you leave around 2012?  
 4 A. I don't even remember, to be  
 5 honest with you.  
 6 Q. All right. Did you have a title  
 7 while you were at Mel Harris?  
 8 A. I was -- I don't remember. I  
 9 think it's M -- MIS, management information  
 10 system.  
 11 Q. And --  
 12 A. On my card, if I can remember.  
 13 Q. -- did your job responsibilities  
 14 change in any major way from when you  
 15 started and when you stopped working there?  
 16 A. No.  
 17 Q. Okay. What were your major  
 18 responsibilities when you worked at Mel  
 19 Harris beginning approximately 2002?  
 20 A. My major responsibility was --  
 21 starting in 2002 was to do -- to read a  
 22 database, and create subpoenas, information  
 23 subpoenas.  
 24 Q. By read a database, what do you  
 25 mean?

54

1 T. FABACHER  
 2 A. I mean to read a database. I  
 3 don't know how else to explain it.  
 4 Q. To gather information from a  
 5 database, and have it spit out information  
 6 subpoenas? Is that what you mean?  
 7 A. No. It would mean to read a  
 8 database. That's -- the technical term,  
 9 that's -- I don't know how else to explain  
 10 it.  
 11 Q. Well, just in a layman's term? I  
 12 don't need the technical term.  
 13 A. I don't know layman's term. I'm  
 14 not a layman. The -- the technical term is  
 15 to read a database.  
 16 Q. And what does it mean to read a  
 17 database? What does --  
 18 A. It means to read a database. I --  
 19 I -- I don't understand how -- I -- to read,  
 20 just like you read a piece of paper.  
 21 Q. Okay. You read the data that's in  
 22 the database?  
 23 A. That's correct.  
 24 Q. And what do you do with the data  
 25 in the database when you read it?

55

1 T. FABACHER  
 2 A. And then I read it. And then in  
 3 this case, I took the data, and printed  
 4 information subpoenas.  
 5 Q. And in this case, what do you  
 6 mean? When you say in this case.  
 7 A. For this particular task -- to say  
 8 -- to read a database is to -- to acquire  
 9 the data out of the database, and then to  
 10 then take that data, and put it in a  
 11 document. Similar to mail merge. If you're  
 12 looking for a layman term. There you go.  
 13 Mail merge. How's that?  
 14 Q. Okay. So, you have a -- you set  
 15 up a computer system that there's some sort  
 16 of -- something like a mail merge of data?  
 17 A. Correct, that's -- would be  
 18 correct.  
 19 Q. And that would be a mail merge of  
 20 names, account numbers, amounts due, and  
 21 that type of information, and to form  
 22 letters like information subpoenas? Is that  
 23 what you mean?  
 24 A. That's correct.  
 25 Q. Okay. Did you develop any

56

1 T. FABACHER  
 2 programs while you were at Mel Harris?  
 3 A. Yes, I did.  
 4 Q. Were there names to these  
 5 programs?  
 6 A. There were.  
 7 Q. What were the names of the  
 8 programs?  
 9 A. Pinpoint, P-I-N-P-O-I-N-T.  
 10 Q. And was Pinpoint the only program  
 11 that you developed while you were at Mel  
 12 Harris?  
 13 A. I think a number of utilities. We  
 14 didn't have names for them.  
 15 Q. What do you mean by utilities?  
 16 A. Well, you -- these would be  
 17 applications that read data.  
 18 Q. So, basically, another version of  
 19 a mail merge? Is that what you mean?  
 20 A. Depending on the situation -- some  
 21 were mail merges. Some could be exporting a  
 22 file.  
 23 Q. All right. What were your --  
 24 roughly speaking, what were your hours at  
 25 Mel Harris?

14 (Pages 53 to 56)

57

1 T. FABACHER  
 2 A. Nine to 5.  
 3 Q. Was that here in Manhattan?  
 4 A. There -- (indicating) -- in  
 5 Manhattan, yes. Yes.  
 6 Q. Okay.  
 7 A. I believe we were on John Street.  
 8 And then -- yeah.  
 9 Q. All right. Fine. Fair enough.  
 10 What was your -- just generally  
 11 speaking, ballpark --  
 12 A. Sure.  
 13 Q. -- about what percentage of your  
 14 time would you spend doing, say, computer  
 15 programming?  
 16 A. Oh, I don't know.  
 17 Q. Most of the time? Only a little  
 18 bit of the time?  
 19 A. I -- you know . . .  
 20 MR. SCHER: Want to put a time  
 21 frame on it?  
 22 A. Yeah. Can you give me an exact --  
 23 you know --  
 24 Q. That's fine. I -- I appreciate  
 25 that because you're doing exactly what I

58

1 T. FABACHER  
 2 asked you to do which is asking me  
 3 questions.  
 4 A. Yeah.  
 5 Q. Were you -- my understanding is  
 6 that your responsibilities while you were at  
 7 Mel Harris were largely the same; is that  
 8 correct? Or did it change in any  
 9 significant way?  
 10 A. I would say largely the same.  
 11 Q. Okay. Is the breakdown -- just  
 12 generally speaking, about the tasks that you  
 13 would do while you were at Mel Harris, would  
 14 that breakdown change in any way  
 15 significantly over that time?  
 16 A. Not significant.  
 17 Q. Okay. So, just ballpark idea,  
 18 what percentage of your time would you spend  
 19 doing what -- would you spend half your time  
 20 doing computer programming? Five percent of  
 21 your time? Just ballpark --  
 22 A. Yeah, because it -- it's -- you  
 23 know, each time frame -- like, if I had a  
 24 task to do at one time, it could be 50  
 25 percent. Sometimes it could be zero

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1 T. FABACHER  
 2 percent. It could be -- more like working  
 3 on PC's. PC's are not working, you know,  
 4 putting in -- putting in a copying machine.  
 5 Yeah, you know just -- we ordered a new  
 6 copying machine. Now, you would think you  
 7 would just plug it in. But no, copying  
 8 machines can actually be quite difficult.  
 9 Q. All right. So, were you the tech  
 10 person at Mel Harris?  
 11 A. I was the MIS director -- the --  
 12 management information system, that's what I  
 13 was.  
 14 Q. So, you were managing all the  
 15 computer programs at Mel Harris; is that  
 16 right?  
 17 A. I installed them. I don't know  
 18 about manage -- yeah, okay.  
 19 Q. Is that right? I mean just  
 20 generally speaking, you installed the  
 21 software at Mel Harris, correct?  
 22 A. Yes.  
 23 Q. You -- you designed the --  
 24 generally speaking, you designed the  
 25 software that Mel Harris used?

60

1 T. FABACHER  
 2 A. No, I did not.  
 3 Q. This database --  
 4 A. One -- one of it.  
 5 Q. Okay. You did -- you designed  
 6 Pinpoint?  
 7 A. That's correct.  
 8 Q. Okay.  
 9 A. That's -- that was not the system  
 10 of record.  
 11 Q. What do you mean by system of  
 12 record?  
 13 A. A system of record is -- is the --  
 14 is the -- the -- system of -- it's the --  
 15 the -- the -- the main data.  
 16 Q. So, are you saying you designed a  
 17 database to maintain --  
 18 A. I didn't say I designed a  
 19 database.  
 20 Q. So, what do you mean by that?  
 21 A. I said I read a database.  
 22 Q. Okay. Because you're talking to a  
 23 person who barely knows how to turn on his  
 24 computer.  
 25 A. Okay. Well, then see -- see --

15 (Pages 57 to 60)

61

1 T. FABACHER  
 2 I'm telling you. Copy machines are  
 3 difficult. There's a difference between  
 4 reading a database and designing a database.  
 5 Q. In what way?  
 6 A. Okay. So, like, for example, to  
 7 read this document (indicating). And  
 8 another one is to actually craft a document,  
 9 to actually write the document. One is to  
 10 read, one is to write.  
 11 So, I did not create the -- the --  
 12 what's called the system of record -- where  
 13 the information lived, for example, the --  
 14 the case information, any payment  
 15 information, I did not write that.  
 16 Q. Where did that information come  
 17 from?  
 18 A. That lived in a program called  
 19 Debtmaster. D-E-B-T-M-A-S-T-E-R.  
 20 Debtmaster.  
 21 (Whereupon, an off-the-record  
 22 discussion was held, and a portion of the  
 23 testimony was read back.)  
 24 Q. So, I apologize if I'm going to  
 25 ask you the same question. Because I'm

62

1 T. FABACHER  
 2 still trying to figure out how to turn on my  
 3 computer and the -- too big a stretch on  
 4 getting the water. So, Pinpoint, what does  
 5 that do?  
 6 A. That reads -- that reads the  
 7 database.  
 8 Q. And Debtmaster, what does that do?  
 9 A. I didn't write it. So, my -- it  
 10 stores the database.  
 11 Q. It stores the information such as  
 12 names, addresses, amounts due, and so forth?  
 13 A. Yes.  
 14 Q. Are those the main two functions  
 15 between Pinpoint and Debtmaster?  
 16 A. I don't understand the question.  
 17 Q. So, you said Pinpoint reads the  
 18 database, correct?  
 19 A. Correct.  
 20 Q. And Debtmaster stores the  
 21 information, the data such as names,  
 22 addresses, and so forth, correct?  
 23 A. Correct.  
 24 Q. Okay. Are those the two main  
 25 functions of these programs?

63

1 T. FABACHER  
 2 A. I'm not -- I didn't really use  
 3 Debtmaster, so I can't answer to that. So,  
 4 I was not a real Debtmaster user. I just  
 5 knew that it was the database. So, I don't  
 6 know its main functions. So, I don't know  
 7 how you say function in that sense. But  
 8 it's the database. That's all I know.  
 9 Q. And your design of Pinpoint  
 10 integrates the data from Debtmaster into a  
 11 mail merge; is that right?  
 12 A. I don't know if it integrates it.  
 13 Reads the data.  
 14 Q. It uses the data?  
 15 A. It reads the data. I -- you know,  
 16 it is what it is. It reads the data.  
 17 Q. And what is --  
 18 A. I don't know why you can't -- we  
 19 just can't say, read the data. It's pretty  
 20 plain. I think it's pretty plain. It's --  
 21 reads the data. Because use is -- is very  
 22 different.  
 23 Q. In what way?  
 24 A. Use is, like, manipulates or  
 25 something -- it reads the data.

64

1 T. FABACHER  
 2 Q. It puts the data in somewhere --  
 3 does it --  
 4 A. It reads the data. That's what --  
 5 you want me to be particular. I'm trying to  
 6 -- to -- it reads the data.  
 7 Q. And I know for you reads the data  
 8 is entirely clear because this is what you  
 9 do for a living.  
 10 A. Right.  
 11 Q. So, to a layperson, can you  
 12 elaborate on what you mean by reads the  
 13 data?  
 14 A. Okay. It queries the data.  
 15 Q. It pulls the data information from  
 16 the database, and does something with it?  
 17 A. Okay. I guess that's query. Is  
 18 that your definition of query?  
 19 Q. I'm just asking you in layman's  
 20 terms --  
 21 A. I'm giving you layman's terms.  
 22 Read the data. I don't know how much more  
 23 layman I can be. I -- I'm -- I'm -- I don't  
 24 mean to be, you know -- but reading the  
 25 data. I don't -- I don't -- I don't

16 (Pages 61 to 64)

65

1 T. FABACHER  
 2 understand how that's inefficient.  
 3 Q. Okay. So, roughly speaking, in a  
 4 month, a year doing computer installation,  
 5 copier installation, working on software,  
 6 working on computer issues, in a year, or a  
 7 month, roughly speaking, what percentage of  
 8 time did that take?  
 9 A. It varies.  
 10 Q. From what to what?  
 11 A. It varies. Sometimes, as I -- as  
 12 I testified earlier, sometimes it could be  
 13 80 percent. Sometimes it could be zero.  
 14 Q. On average over the year, what  
 15 would it be approximately?  
 16 A. I -- maybe -- I don't know. It  
 17 would be speculation.  
 18 Q. Approximately, what do you think  
 19 it would be?  
 20 A. I -- I'd have to think about it.  
 21 Q. Take your time. So, the question  
 22 is approximately what percentage of your  
 23 time, generally speaking, say, over the  
 24 course of a year would you spend doing  
 25 computer-related work, installing computers,

66

1 T. FABACHER  
 2 doing software work, that type of thing?  
 3 Roughly speaking.  
 4 A. I don't know. Maybe -- maybe 20  
 5 percent. I mean it's -- I -- I -- you know,  
 6 it's so long ago. You know, I don't know  
 7 rough. You're asking me to give you an  
 8 answer at a deposition to say, you hereby  
 9 testify that -- you know, like -- that --  
 10 that -- so, I mean I don't know because each  
 11 year's different. In the beginning, it was  
 12 a little bit more. As the years went on,  
 13 less programming, it was less. I mean you  
 14 -- you -- if you ask me a reasonable  
 15 question, I could give you a reasonable  
 16 answer.  
 17 Q. I thought you had testified that  
 18 your major responsibilities and the  
 19 breakdown of your major responsibilities did  
 20 not change in any significant way during the  
 21 time period that you worked at Mel Harris;  
 22 is that correct?  
 23 A. Well, you used the word  
 24 significant.  
 25 Q. Did it change in any significant

67

1 T. FABACHER  
 2 way?  
 3 A. No. I said -- no, it didn't --  
 4 not in a significant way. But you're asking  
 5 me to put a number on it.  
 6 Q. Okay. Ballpark for the time you  
 7 worked there, approximately 20 percent of  
 8 your time was doing computer work?  
 9 Ballpark, is that approximately right?  
 10 A. That's accurate.  
 11 Q. Thank you.  
 12 What were your other major tasks  
 13 other than doing what I'm going to call  
 14 computer work? What were the -- the major  
 15 part of the time that you spent? Just  
 16 generally speaking.  
 17 A. Major part was just maintaining  
 18 the PC's, you know.  
 19 Q. Is that what you mean by general  
 20 20 percent, or do you mean on top of the 20  
 21 percent?  
 22 A. Yeah, I would -- I would say 20  
 23 percent was probably coding.  
 24 Q. Okay.  
 25 A. You have a lot of things. You

68

1 T. FABACHER  
 2 have to do backups every day, server  
 3 maintenance -- server maintenance, wiring,  
 4 buying new scanners.  
 5 Q. Generally speaking, approximately,  
 6 how much of your time was doing backups,  
 7 servers, maintaining? Roughly speaking, was  
 8 that another 20 percent?  
 9 A. I don't know. I mean -- I mean I  
 10 -- I can't give you a solid number because  
 11 -- I mean this was ten years ago.  
 12 Q. I'm not asking for a solid number.  
 13 I just asking --  
 14 A. You're asking me for a solid  
 15 number.  
 16 Q. Rough estimate --  
 17 A. You just asked me -- I can't give  
 18 you -- I can't give you a number. You're  
 19 asking me for a number that you want me to  
 20 testify for. And I -- how do I give you an  
 21 exact -- you tell me 10 percent, and I can't  
 22 ask you -- I --  
 23 Q. I'm not --  
 24 A. -- can't answer that.  
 25 Q. Roughly speaking, you did 20

17 (Pages 65 to 68)

69

1 T. FABACHER  
 2 percent of doing computer work that we  
 3 talked about before?  
 4 A. We said coding.  
 5 Q. Coding. About 20 percent of your  
 6 time, roughly speaking, is coding?  
 7 A. Correct.  
 8 Q. What you just talked about,  
 9 backing up, server, would that be more or  
 10 less -- significantly more, or less, or  
 11 roughly the same amount of time that you  
 12 spent coding, generally speaking?  
 13 A. No, it would be more.  
 14 Q. Okay. Would it be twice as long,  
 15 roughly speaking, than you would spend  
 16 coding?  
 17 A. Probably.  
 18 Q. Okay. What -- would you say it  
 19 would be about half the time that you worked  
 20 is doing backup, server maintenance, and so  
 21 forth?  
 22 A. Yes, and -- and maintaining the  
 23 data. Yeah, just in the sense making sure  
 24 the data -- you know, the integrity of the  
 25 data, the security.

70

1 T. FABACHER  
 2 Q. So, that would be, roughly  
 3 speaking, about half the time you would  
 4 spend while you were at Mel Harris, correct?  
 5 A. Again, I . . .  
 6 Q. Roughly speaking, would it --  
 7 would it -- is it fair to say -- you tell  
 8 me. I'm asking you.  
 9 A. I don't know.  
 10 Q. What --  
 11 A. You're asking me. I told you I  
 12 can't really remember. You're asking me, do  
 13 you remember a case from ten years back? I  
 14 don't know. What did you do ten years ago?  
 15 I don't know, man. You're asking me to give  
 16 you a -- you say roughly. I don't know. I  
 17 mean can I say anywhere between 30 and 70  
 18 percent? Is that rough?  
 19 Q. Is that within that range?  
 20 A. Yeah. I would say between 30 and  
 21 70 percent. How's that?  
 22 Q. All right. And how would you  
 23 describe -- it's not called coding. Is  
 24 there a phrase that you would use to  
 25 describe that work that you --

71

1 T. FABACHER  
 2 A. Management --  
 3 Q. -- do for --  
 4 A. -- information system which was my  
 5 job title.  
 6 Q. In addition to coding and  
 7 management information system, was there any  
 8 major part of your responsibilities while  
 9 you worked at Mel Harris?  
 10 A. The only other thing that I did  
 11 was -- besides maintaining the data. And  
 12 then I did the -- the affidavits to verify  
 13 the data.  
 14 Q. And ballpark --  
 15 A. Can't give you a ballpark on that  
 16 one because it varied -- it varied. There's  
 17 -- there's no ballpark.  
 18 MR. SCHER: Let him finish his  
 19 question.  
 20 THE WITNESS: Oh, I'm sorry.  
 21 Q. When you say affidavits, what do  
 22 you mean?  
 23 A. It's an affidavit of merit.  
 24 Q. The 20 percent for coding, the 30  
 25 to 70 percent for management information

72

1 T. FABACHER  
 2 systems, and the time you spent doing  
 3 affidavits of merit, were there any other  
 4 major responsibilities that you had while  
 5 working at Mel Harris?  
 6 A. No.  
 7 Q. Okay. When you say the amount of  
 8 time that you spent doing affidavits of  
 9 merit varied, what do you mean by that?  
 10 A. That's -- just what I said. It  
 11 varied.  
 12 Q. Okay. Did you do affirmations  
 13 (sic) of merit from 2002 onward?  
 14 A. I don't remember at that time  
 15 frame.  
 16 Q. Okay.  
 17 MR. KESHAVARZ: If you could mark  
 18 this.  
 19 (Whereupon, the aforementioned  
 20 Affidavit of Merit (LR Credit 18, LLC  
 21 vs. Agustina Bueno) was marked as  
 22 Plaintiff's Exhibit 3 for  
 23 identification as of this date by the  
 24 Reporter.)  
 25 Q. (Perusing document.)

18 (Pages 69 to 72)

73

1 T. FABACHER  
2 I am showing you what's been  
3 marked as Plaintiff's Exhibit Number 3. Is  
4 this an example of an affidavit of merit  
5 that you were just testifying about?  
6 A. Can I read it?  
7 Q. Please.  
8 A. (Perusing document.)  
9 Correct.  
10 Q. Okay. Now, would you do  
11 affidavits of merit for all of the  
12 collection lawsuits that Mel Harris filed?  
13 A. No.  
14 Q. Would you do it for most of the  
15 collection lawsuits that Mel Harris filed?  
16 A. I don't know.  
17 Q. Would you execute the affidavits  
18 of merit for all of the cases filed under  
19 the name of -- one of the LR Credit  
20 entities?  
21 MR. MILLS: Objection.  
22 A. I'm sorry. Repeat the question?  
23 Q. I'm going to use the term LR  
24 Credit entities. And I'm --  
25 A. We need --

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1 T. FABACHER  
2 Q. -- going to be --  
3 A. -- to use specific. They're very  
4 different.  
5 Q. I was about to get to that.  
6 A. Okay.  
7 Q. When I say LR Credit entities,  
8 there are LR Credits 1 through something  
9 like 23? Is that about right?  
10 MR. MILLS: Objection.  
11 A. I don't know.  
12 Q. For cases where the plaintiff uses  
13 the word LR Credit, regarding LR Credit 1,  
14 or 8, or 18, whatever the number is, would  
15 you be the person that would sign the  
16 affidavits of merit at Mel Harris?  
17 MR. MILLS: Objection.  
18 MR. SCHER: You're asking for  
19 every -- if he did it for every LR  
20 Credit case that ever --  
21 A. Do you have a list of the LR  
22 Credits for my -- to jog my memory? I don't  
23 even remember the -- I don't even remember  
24 all the -- the numbers.  
25 Q. You don't have to remember the

75

1 T. FABACHER  
2 numbers. What I'm asking you is this --  
3 A. Well, you're asking me to testify  
4 upon it.  
5 Q. Let me be specific.  
6 A. Yeah, please.  
7 Q. Whoever the plaintiff is, if the  
8 plaintiff used the word LR Credit,  
9 regardless of the number, if the plaintiff  
10 used the word LR Credit, would you be the  
11 person at Mel Harris who would execute the  
12 affidavits of merit for those lawsuits?  
13 MR. MILLS: Objection.  
14 A. I don't know because you haven't  
15 given me the list. So, you're asking me for  
16 every LR Credit -- I -- I don't know. I was  
17 -- they were -- I had already left. So,  
18 they -- I'm going to go with no.  
19 Q. When did you leave?  
20 A. I don't remember the date.  
21 Q. While you were there at Mel  
22 Harris, were you the person who was  
23 executing the affidavits of merit for the  
24 collection lawsuits Mel Harris filed where  
25 the plaintiff included the name LR Credit?

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1 T. FABACHER  
2 MR. MILLS: Objection.  
3 Q. Regardless of whatever number it  
4 was.  
5 MR. MILLS: Objection.  
6 A. I -- I'm going to go -- I -- I was  
7 not -- I -- I don't remember. I mean I -- I  
8 did -- I did the ones -- I knew the ones  
9 that I was in charge of it. That's all I  
10 know.  
11 Q. Okay. Were you in charge of all  
12 the ones that you used the words LR Credit  
13 in the plaintiff?  
14 MR. MILLS: Objection.  
15 A. I don't know. You don't -- give  
16 me the list of the names. You're asking me  
17 to say -- how can I do it? You have the  
18 list of the names, I'm happy to answer the  
19 question.  
20 Q. You mean the list of the names of  
21 the -- the numbers of the LR Credit  
22 entities? Is that what you mean?  
23 A. You are asking me to answer for an  
24 array of names that you're not even giving  
25 me. How can I testify, on grounds of

19 (Pages 73 to 76)

77

1 T. FABACHER  
 2 perjury, on that? You want me to perjure  
 3 myself? No, counsel?  
 4 MR. SCHER: No. I think you mean  
 5 under the penalty of perjury.  
 6 A. Under the penalty of perjury.  
 7 Whatever it is. I'm not an attorney. See  
 8 -- no, no, no -- but I'm not going to  
 9 testify to something that -- unless you can  
 10 provide me a list. I'm sorry, counselor. I  
 11 -- just because you're asking me to swear,  
 12 you know, with the right arm on something  
 13 that, you know, I can't answer.  
 14 Q. By the list, you mean the list of  
 15 numbered LR Credit entities --  
 16 A. No. If you want --  
 17 MR. MILLS: Objection. Note my  
 18 objection before that.  
 19 A. -- if you want me to testify on  
 20 something, you have to give me the list.  
 21 Q. Okay. I'm asking you a slightly  
 22 different question.  
 23 A. Okay.  
 24 Q. While you worked at Mel Harris,  
 25 and you signed affidavit of merit --

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1 T. FABACHER  
 2 A. Correct.  
 3 Q. -- did you sign the affidavits of  
 4 merit where the plaintiff used the words LR  
 5 Credit regardless of whatever came after LR  
 6 Credit? Were you the person who did the  
 7 signings of the affidavits of merit?  
 8 MR. SCHER: Objection.  
 9 Asked and answered.  
 10 MR. MILLS: Objection.  
 11 A. I can't answer that question. I  
 12 can't answer that.  
 13 Q. Did you do affidavits of merit for  
 14 any lawsuits that Mel Harris filed other  
 15 than those where the plaintiff had the name  
 16 LR Credit?  
 17 MR. MILLS: Objection.  
 18 A. All right. Repeat that question  
 19 again?  
 20 Q. Sure. I'd be glad to.  
 21 Did you sign affidavits of merit  
 22 for collection lawsuits filed by Mel Harris  
 23 for cases other than when the plaintiff used  
 24 the words LR Credit?  
 25 MR. MILLS: Objection.

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1 T. FABACHER  
 2 A. Yes.  
 3 Q. Were you the person who did all of  
 4 the signings of the -- all or almost all the  
 5 signings of the affidavits of merit for the  
 6 collection lawsuits Mel Harris filed while  
 7 you worked there?  
 8 MR. SCHER: Objection to form.  
 9 You can answer.  
 10 A. I don't know. I know what I  
 11 signed. That's it. I -- I -- I was not in  
 12 charge -- you know, I don't know what other  
 13 people signed. So, how can I know whether  
 14 it's a majority? You're asking me for a  
 15 number. How do I know?  
 16 Q. There was -- was there anyone  
 17 else, to your knowledge, at LR -- at Mel  
 18 Harris who was in charge of signing  
 19 affidavits of merit?  
 20 A. There were other people but I  
 21 don't remember their name.  
 22 Q. Do you know if that was a major  
 23 thing that they did at Mel Harris?  
 24 MR. SCHER: Objection.  
 25 A. Don't know.

80

1 T. FABACHER  
 2 Q. Who were the other people?  
 3 A. I don't remember their name.  
 4 Q. Were they lawyers or non-lawyers?  
 5 A. I think a non-lawyer.  
 6 Q. Was one of them named Michael  
 7 Young?  
 8 A. I believe -- I'm -- I don't  
 9 remember. I -- I don't remember.  
 10 Q. Okay. What steps, if any, did you  
 11 take to determine whether the facts asserted  
 12 in an affidavit of merit such as Exhibit 3  
 13 were true?  
 14 MR. MILLS: Objection.  
 15 MR. LICHTMAN: Before we answer  
 16 the question, can we give a stipulation  
 17 that an objection by one is an  
 18 objection by all?  
 19 MR. KESHAVARZ: Yes.  
 20 MR. LICHTMAN: Thank you.  
 21 A. Can you repeat the question?  
 22 Q. And I'd be glad to.  
 23 A. Okay.  
 24 Q. The facts that are -- well, strike  
 25 that.

20 (Pages 77 to 80)

81

1 T. FABACHER  
 2 Exhibit 3 is the -- is the  
 3 template form used for the affidavits of  
 4 merit that you executed, correct?  
 5 A. Correct.  
 6 MR. SCHER: At what point in time?  
 7 A. Yeah, for . . .  
 8 Q. So, for the time period that you  
 9 worked at Mel Harris, is Exhibit 3 the basic  
 10 template for the affidavits of merit that  
 11 you signed?  
 12 A. For this particular case. But  
 13 they -- it depend -- there were different  
 14 affidavits.  
 15 Q. Different affidavits of merit?  
 16 A. That's correct.  
 17 Q. And the templates for the  
 18 affidavits of merit, some of them were  
 19 different than Exhibit 3? Is that what  
 20 you're saying?  
 21 A. Mm-hmm.  
 22 Q. You have to --  
 23 A. That's correct.  
 24 Q. Generally speaking, how many  
 25 different types of affidavits of merit were

82

1 T. FABACHER  
 2 there?  
 3 A. I -- I can't answer that. There's  
 4 no generally speaking.  
 5 Q. And did the affidavits of merit  
 6 that were used change over time? In other  
 7 words, you know, for a three-year period, it  
 8 would be one template, and then the next  
 9 three-year period, it would be another  
 10 template?  
 11 A. It's situational.  
 12 Q. What do you mean by that?  
 13 A. I mean the laws changed. The  
 14 types of -- of -- of -- of data was  
 15 different. So -- so, I'm going to say that  
 16 -- was it the same as this (indicating)?  
 17 No.  
 18 Q. I mean the template of the text,  
 19 putting aside the issue about the names of  
 20 the --  
 21 A. That's what it is, right? You  
 22 read the data.  
 23 MR. MILLS: I object to the use of  
 24 the word template throughout this line  
 25 of questioning.

83

1 T. FABACHER  
 2 Q. Is there a template that use for  
 3 the affidavits of merit?  
 4 A. No. It's -- it's not -- no, I  
 5 wouldn't call it a template.  
 6 Q. What would you call it?  
 7 A. I would call it a database.  
 8 Q. Okay. And what do you mean by  
 9 that?  
 10 A. The data in here (indicating) --  
 11 so I -- this is -- to me, this is a  
 12 database. And so the -- so, it's -- it's --  
 13 it's data. That's what I'm attesting to,  
 14 the data.  
 15 Q. (Perusing document.)  
 16 The affidavits of merit that you  
 17 signed at Mel Harris say that you are fully  
 18 and personally familiar with and have  
 19 personal knowledge of the facts and  
 20 proceedings related to the within action?  
 21 A. Yes.  
 22 MR. SCHER: I think -- I'm just  
 23 going to object to the fact that you  
 24 quoted part of the affidavit out of  
 25 context.

84

1 T. FABACHER  
 2 MR. KESHAVARZ: Okay.  
 3 THE WITNESS: Can I send an e-mail  
 4 real quick?  
 5 MR. KESHAVARZ: You want to take a  
 6 quick break?  
 7 THE WITNESS: Can we take a quick  
 8 break?  
 9 MR. KESHAVARZ: Yeah.  
 10 (Whereupon, a short recess was  
 11 taken.)  
 12 MR. KESHAVARZ: Back on the  
 13 record. You can mark this as an  
 14 exhibit, please.  
 15 (Whereupon, the aforementioned  
 16 Opinion in Monique Sykes vs. Mel  
 17 Harris was marked as Plaintiff's  
 18 Exhibit 4 for identification as of this  
 19 date by the Reporter.)  
 20 Q. (Perusing document.)  
 21 Okay. Mr. Fabacher, I am showing  
 22 you what's been marked as Plaintiff's  
 23 Exhibit Number 4. It's quite long. Feel  
 24 free to take as much time as you want to  
 25 take a look at it. I'm going to ask you

21 (Pages 81 to 84)

85

1 T. FABACHER  
 2 to --  
 3 A. Do I get to read it?  
 4 Q. Of course. I --  
 5 A. The whole thing?  
 6 Q. If you'd like.  
 7 A. Sure.  
 8 Q. I was -- do you know if that --  
 9 A. Most of it.  
 10 Q. -- all right -- do you know if --  
 11 A. Am I allowed to read the whole  
 12 thing?  
 13 Q. You are. Let me ask you a  
 14 question first. Do you know if that is one  
 15 of the orders issued in the Sykes case?  
 16 A. I do not -- even read any of the  
 17 orders.  
 18 Q. Hmm?  
 19 A. I didn't read any of the orders.  
 20 Q. Okay. You don't know?  
 21 A. Don't know.  
 22 Q. Fine. Fine.  
 23 A. I never read -- this would be the  
 24 first one I've actually read --  
 25 Q. Okay. I'm going to ask you

86

1 T. FABACHER  
 2 questions about pages seven through --  
 3 A. But I want to read the whole thing  
 4 first.  
 5 Q. -- I know -- just -- I'm going to  
 6 ask you about pages seven through eleven.  
 7 Take as much time as you would like to read  
 8 the whole thing if you would like. I'm  
 9 really only going to ask you about those  
 10 pages.  
 11 A. Okay.  
 12 Q. But feel free to read --  
 13 A. Read it --  
 14 Q. -- it to --  
 15 A. -- up to somewhere around there.  
 16 Sorry.  
 17 Q. Okay.  
 18 A. (Perusing document.)  
 19 We're not going past fifteen,  
 20 correct?  
 21 Q. I'm not going to ask you past  
 22 fifteen. But you can feel free to review as  
 23 much as you would like.  
 24 A. Okay. As long as we don't go past  
 25 fifteen -- unless we -- just sit here.

87

1 T. FABACHER  
 2 Q. It's up to you. Okay. So, have  
 3 you had a chance to read through Exhibit 4,  
 4 at least through page fifteen?  
 5 A. I did read to page fifteen.  
 6 Q. Okay. So, let me start with page  
 7 seven. If you see where it goes, on the  
 8 last line where it says 3/1/11 Fabacher dep?  
 9 A. Mm-hmm -- yes. Broke the rules.  
 10 Q. I represent to you when the --  
 11 when the Opinion references the Fabacher  
 12 dep, it means your deposition in the Sykes  
 13 case -- represent that to you.  
 14 MR. KESHAVARZ: Do we -- can we  
 15 have a stipulation as to that?  
 16 MR. LICHTMAN: I'm not stipulating  
 17 to that.  
 18 MR. KESHAVARZ: All right. Fine.  
 19 Q. The fact -- let me ask you a  
 20 general question, then we can go line by  
 21 line if you would like. It's fine with me  
 22 either way. Where it says Affidavits of  
 23 Merit, beginning on page seven, all the way  
 24 through page 11 up to the point where it  
 25 says Procedural History, are the facts

88

1 T. FABACHER  
 2 stated in those paragraphs true?  
 3 MR. MILLS: Objection.  
 4 MR. SCHER: Same objection.  
 5 A. Can I read it again --  
 6 Q. Yes.  
 7 A. -- just to make sure?  
 8 (Perusing document.)  
 9 Say -- so, you're saying number  
 10 five on page seven to B, Procedural History,  
 11 on --  
 12 Q. Yes.  
 13 A. -- eleven?  
 14 Well, number one, my -- my title  
 15 is wrong. It was -- management  
 16 information --  
 17 Q. Well --  
 18 A. -- you asked me a question. I'm  
 19 giving you an answer.  
 20 Q. Well, let me pull the answer back.  
 21 Let me rephrase the question. Let me just  
 22 go through one at a time, and you just tell  
 23 me if the facts are true. Let's go through  
 24 the first sentence. The --  
 25 A. Go ahead.

22 (Pages 85 to 88)

89

1 T. FABACHER  
2 Q. -- affidavits of merit submitted  
3 by (sic) Mel Harris and Leucadia defendants  
4 in New York City Civil Court follow a  
5 uniform format. Is that true?  
6 A. I don't know what uniform format  
7 is.  
8 Q. Okay. Well, why don't you read  
9 all the pages, and then let me know when  
10 you're done.  
11 A. Okay.  
12 (Perusing document.)  
13 Okay.  
14 Q. Ready to go?  
15 A. (Indicating.)  
16 Q. Yes. My question is, are the  
17 facts stated beginning on page seven after  
18 where it says Affidavits of Merit through  
19 page eleven above where it says Procedural  
20 History, are the facts stated between those  
21 pages true?  
22 MR. MILLS: Objection.  
23 MR. LICHTMAN: Objection.  
24 MR. SCHER: Note my objection.  
25 A. I don't agree with them. I mean

90

1 T. FABACHER  
2 true is truth -- am I -- my truth, for me  
3 personally? No. I could tell a few -- a  
4 few things. He used the word template. I  
5 did not use the word template. He used the  
6 word template -- he said would you call it a  
7 template.  
8 And I -- I believe he just quoted  
9 the word template out of it. I'm not really  
10 sure -- I don't remember using the word  
11 template. But clearly he quoted. But he  
12 kept on calling it a template. And I was  
13 trying -- again, as in here, tried to  
14 explain to him that it -- it -- it's -- it's  
15 not necessarily a template. That's his  
16 layman's term. But that's not a template.  
17 So, that's the -- that's the -- my -- a big  
18 objection on that.  
19 The second objection, there are  
20 several of them I have. Do-do-do. Let's  
21 see her. So --  
22 MR. SCHER: I just want to --  
23 A. -- so, there's --  
24 MR. SCHER: -- before you --  
25 A. -- many things. So, I'm not going

91

1 T. FABACHER  
2 to -- I can't answer.  
3 MR. SCHER: When I start talking,  
4 you stop.  
5 THE WITNESS: Yeah.  
6 MR. KESHAVARZ: Brett, I -- I  
7 think you can say objection as to form.  
8 If you're going to make an objection  
9 beyond that, that's fine. But I would  
10 ask to exclude the witness while you do  
11 that because I don't want it to --  
12 MR. SCHER: My objection is not as  
13 to form. My objection is to the fact  
14 that you're asking him to testify with  
15 regard to the truthfulness of  
16 statements that are supported by -- in  
17 the Court's decision by documents which  
18 you're not providing to him. So,  
19 that's my objection. I'm letting him  
20 answer.  
21 MR. MILLS: I also object on that  
22 ground.  
23 MR. KESHAVARZ: Jeff, you didn't  
24 -- you didn't . . .  
25 MR. LICHTMAN: I don't need to

92

1 T. FABACHER  
2 because an objection by one is an  
3 objection by all. And now you're  
4 defeating the purpose by extending the  
5 number of lines in the transcript. Not  
6 from me.  
7 A. So --  
8 Q. As --  
9 A. -- so ask me a specific question.  
10 Q. So, other than the word template,  
11 are there any facts -- strike that.  
12 Other than the use of the word  
13 template, are all the facts stated on page  
14 seven under the term Affidavits of Merit  
15 through page eleven above the Procedural  
16 History, other than the use of the word  
17 template, are there any other facts that you  
18 believe are not true?  
19 MR. MILLS: Objection.  
20 A. Do we want to go line by line?  
21 Q. That's -- however you want to do  
22 it.  
23 A. No, let's go line by line.  
24 Q. That's fine --  
25 A. That's -- because I'm not going to

23 (Pages 89 to 92)

93

1 T. FABACHER  
 2 say yes to it.  
 3 Q. Take your time. That's fine.  
 4 A. Okay.  
 5 (Perusing document.)  
 6 Go ahead.  
 7 Q. Well, I'm -- I'm just asking you  
 8 -- you can read --  
 9 A. I -- understand, I'm not going to  
 10 answer that question -- I mean I'm going to  
 11 -- I'm -- can't say a yes or no on that.  
 12 Q. Well, other than the use of the  
 13 term template that you disagree -- disagree  
 14 with, can you -- reviewing pages seven  
 15 through eleven, is there anything that you  
 16 see in those pages that you -- that you --  
 17 that is a -- that, as a fact, you disagree  
 18 with?  
 19 A. Yes.  
 20 MR. MILLS: Objection.  
 21 Q. Which -- other than the word  
 22 template --  
 23 A. Okay. Well, let's -- let's go  
 24 through sentence through sentence.  
 25 Q. Go ahead.

94

1 T. FABACHER  
 2 A. Okay. The affidavits of merit  
 3 submitted by the Mel Harris and Leucadia  
 4 defendants in New York City Civil Court  
 5 follow a uniform format.  
 6 What is a uniform format?  
 7 Q. Okay. What else?  
 8 A. (No response.)  
 9 Q. That's your -- so, your -- your  
 10 concern about the first sentence on page  
 11 seven is that -- your concern is the use of  
 12 the term uniform format; is that right?  
 13 MR. MILLS: Objection.  
 14 A. My concern is I don't know what a  
 15 uniform format is.  
 16 Q. So, other than the term uniform  
 17 format that you say you don't understand  
 18 what it means, is there any other fact  
 19 asserted in the first sentence that you  
 20 disagree with?  
 21 MR. MILLS: Objection.  
 22 A. Okay. So, I -- the affidavits of  
 23 merits (sic) submitted by the Mel Harris and  
 24 Leucadia defendants in New York City Court  
 25 (sic), that I agree to.

95

1 T. FABACHER  
 2 Q. Go ahead.  
 3 A. Can I -- can I write on it, say  
 4 what I don't agree to?  
 5 MR. SCHER: No. Just --  
 6 THE WITNESS: Okay.  
 7 MR. SCHER: -- just say what you  
 8 agree with.  
 9 THE WITNESS: Okay.  
 10 A. Next?  
 11 Q. Okay.  
 12 A. We go down to the next sentence?  
 13 Q. Yes.  
 14 A. Okay. Defendant Todd Fabacher,  
 15 (sic) director of information technology for  
 16 Mel Harris, serves -- serves the affidavit  
 17 (sic). Okay. So . . .  
 18 MR. MILLS: Sorry. I think you  
 19 read it incorrectly.  
 20 THE WITNESS: Okay. How did I  
 21 read that incorrectly?  
 22 A. Oh. Serves as the affidavit --  
 23 affiant. Affiant.  
 24 Q. Right.  
 25 A. I'll read it again. Serving --

96

1 T. FABACHER  
 2 I'm not serving. Okay. Defendant Todd  
 3 Fabacher, the director of information  
 4 technology for Mel Harris serves as the  
 5 affiant.  
 6 Okay. So, one, my -- the -- the  
 7 title, I believe, is incorrect. And serves  
 8 as the affiant, I -- just to -- to -- to  
 9 clarify, who is that affiant for what? I  
 10 mean am I the affiant for Mel Harris? I was  
 11 not the affiant for Mel Harris.  
 12 Q. I believe --  
 13 A. You believe.  
 14 Q. Well, let me ask you this.  
 15 A. What am I -- what am -- who am I  
 16 the affiant for?  
 17 Q. All right. Well, I think the  
 18 prior sentence says the Leucadia defendants.  
 19 A. Okay.  
 20 Q. I guess --  
 21 A. So, who is that for?  
 22 Q. So, let me ask you. Were you the  
 23 affiant, the person who signed the  
 24 affidavits of merit, where the plaintiff in  
 25 the affidavit of merit used the words LR

24 (Pages 93 to 96)

97

1 T. FABACHER  
 2 Credit?  
 3 MR. MILLS: Objection.  
 4 MR. SCHER: Same objection as  
 5 before.  
 6 Asked and answered.  
 7 A. I -- I . . .  
 8 Q. You can answer.  
 9 A. I'm sorry. Say that -- say that  
 10 -- could you repeat that for me?  
 11 Q. So, was -- serves as affiant  
 12 apparently as to Leucadia defendants. So,  
 13 let me ask you this --  
 14 A. I signed no affidavit for  
 15 Leucadia. I could tell you that.  
 16 Q. Okay. You signed affidavits of  
 17 merit such as Exhibit 3 where it says the  
 18 plaintiff is LR Credit -- used the word LR  
 19 Credit. Is that --  
 20 A. I signed this affidavit, yes.  
 21 MR. MILLS: Objection before that  
 22 answer.  
 23 Q. Okay. I'm just trying to get to  
 24 what the word affiant. So, let me just ask  
 25 this question. When the affidavit of merit

98

1 T. FABACHER  
 2 that you signed lists the plaintiff with the  
 3 word LR Credit --  
 4 A. Okay.  
 5 Q. -- do you sign affidavits of merit  
 6 where the words LR Credit are listed as the  
 7 plaintiff?  
 8 MR. MILLS: Objection.  
 9 A. Do I? I -- I -- I sign as an  
 10 affiant for the cases that I managed.  
 11 Q. Okay. And those cases that you  
 12 find -- signed affidavits of merit for  
 13 included cases where the plaintiff had the  
 14 words LR Credit, correct?  
 15 MR. MILLS: Objection.  
 16 A. Correct.  
 17 Q. Okay.  
 18 The next sentence --  
 19 A. That -- but again, that doesn't  
 20 say that here. So, I'm -- can I object?  
 21 Because I -- I -- I'm going to say is --  
 22 MR. SCHER: Just say --  
 23 A. -- it's not clear. So, I -- I --  
 24 I can't say that this is accurate because it  
 25 doesn't tell me who I'm -- I answered your

99

1 T. FABACHER  
 2 question. But I -- I -- I can't say that  
 3 this is accurate.  
 4 Q. Fair enough.  
 5 A. Fair enough? Okay.  
 6 Q. Moving on to page --  
 7 A. Moving on.  
 8 Q. -- is the next sentence on page  
 9 eight true?  
 10 MR. MILLS: Objection.  
 11 Q. Well, actually, I think you  
 12 testified as to that already but --  
 13 A. Which sentence is that?  
 14 Q. Beginning on the --  
 15 A. Okay. Okay. In -- in each  
 16 affidavit, he attests that he is, quote, an  
 17 authorized and designated custodian of  
 18 records for the plaintiff, one of many  
 19 Leucadia debt collections entities.  
 20 MR. SCHER: Same objection.  
 21 Again, it's talking about specific  
 22 affidavits, and you're not providing  
 23 them to him to --  
 24 A. That's correct. How do I --  
 25 MR. MILLS: Same.

100

1 T. FABACHER  
 2 A. I mean I can attest to this one  
 3 (indicating).  
 4 Q. When you signed affidavits of  
 5 merit, you testified -- you signed them as  
 6 the authorized designated custodian of  
 7 records, right?  
 8 MR. MILLS: Objection.  
 9 A. I can attest to this one  
 10 (indicating). I mean --  
 11 Q. You signed the affidavits of  
 12 merit. And you -- you swear under oath that  
 13 the facts there are true, correct?  
 14 A. In -- in general terms? When --  
 15 when I sign an affidavit, yes, I'm -- I'm --  
 16 I'm swearing that the facts are true.  
 17 Q. Okay. And the affidavit of merit  
 18 that you signed -- excuse me -- yes, the  
 19 affidavits of merit that you signed while  
 20 you were at Mel Harris stated that you are  
 21 the authorized and designated custodian of  
 22 record. Is that true?  
 23 MR. MILLS: Objection.  
 24 MR. SCHER: Same. Objection.  
 25 Q. For whichever plaintiff there was

25 (Pages 97 to 100)

101

1 T. FABACHER  
 2 in the collection lawsuits, are the  
 3 affidavits of merit that you signed at Mel  
 4 Harris, did they say that you were the  
 5 authorized and designated custodian of  
 6 records --  
 7 MR. MILLS: Objection.  
 8 Q. -- for the plaintiff in those  
 9 affidavits of merit that you signed?  
 10 MR. MILLS: Objection.  
 11 A. Correct. Everything that I signed  
 12 that I maintained the data, I was the -- an  
 13 authorized and designated custodian of  
 14 records.  
 15 Q. So, let me just clarify that --  
 16 A. Yes.  
 17 Q. -- a little bit.  
 18 A. Please.  
 19 Q. So, are you saying that any  
 20 affidavits of merit that you signed while  
 21 you were at Mel Harris said that you were an  
 22 authorized and designated custodian of  
 23 records for the plaintiff that filed that  
 24 suit; is that correct?  
 25 MR. MILLS: Objection.

102

1 T. FABACHER  
 2 A. I -- I couldn't -- unless you  
 3 produce something -- I -- you know, you want  
 4 me to attest to something that -- I mean  
 5 this -- the -- the -- we had many  
 6 affidavits. We had affidavit of service,  
 7 affidavits. You know, there's -- there's --  
 8 because he just says each affidavit. There  
 9 are various affidavits. There's -- there is  
 10 -- there's tons of affidavits.  
 11 Q. Okay. Well, let -- let me ask you  
 12 a question.  
 13 A. Yes. Please.  
 14 Q. Put this aside. And I thought I  
 15 had asked before but I -- let me just ask  
 16 you again.  
 17 A. Yes. Please.  
 18 Q. Okay. The affidavits of merit,  
 19 the -- specifically the affidavits of  
 20 merit --  
 21 A. Doesn't say that here.  
 22 Q. I understand that. But --  
 23 A. Yeah.  
 24 Q. -- let me -- let's -- I have --  
 25 for a second.

103

1 T. FABACHER  
 2 A. Okay. Okay.  
 3 Q. Let me ask you the question. The  
 4 affidavits of merit that you signed while  
 5 you were at Mel Harris, those affidavits of  
 6 merit said that you were the authorized and  
 7 designated custodian of the records for the  
 8 plaintiff in that affidavit of merit?  
 9 MR. MILLS: Objection.  
 10 A. I cannot answer that question that  
 11 -- because I -- I -- I would have to look  
 12 through all those affidavits.  
 13 Q. Well, the forms that you used said  
 14 that they were affidavits -- the forms that  
 15 you used for custodian --  
 16 A. (Indicating) -- Okay. I'm sorry.  
 17 Go ahead.  
 18 Q. -- the forms that you used that  
 19 were the affidavits of merit, did they or  
 20 did they not say that you were the  
 21 authorized and designated custodians of  
 22 record for the plaintiff?  
 23 A. I can't --  
 24 MR. MILLS: Objection before you  
 25 answer.

104

1 T. FABACHER  
 2 A. -- recall.  
 3 Q. Okay. Can you think of a specific  
 4 instance where the affidavit of merit that  
 5 you signed did not say that you were the  
 6 authorized and designated custodian of  
 7 records for the plaintiff?  
 8 MR. MILLS: Objection.  
 9 A. I can't recall.  
 10 Q. Okay. But you can't recall -- the  
 11 only times that you can recall signing an --  
 12 affidavits of merit included the words  
 13 authorized and designated use -- custodian  
 14 of records for the plaintiff; is that  
 15 correct?  
 16 MR. MILLS: Objection.  
 17 A. Can you rephrase the question?  
 18 Q. The only affidavits of merit that  
 19 you recall signing while you were at Mel  
 20 Harris said that you were the authorized and  
 21 designated custodian of records for the  
 22 plaintiff; is that correct?  
 23 MR. MILLS: Objection.  
 24 A. I can -- I can tell you that --  
 25 that the one that I'm handing here

26 (Pages 101 to 104)

105

1 T. FABACHER  
 2 (indicating), yes, it says that.  
 3 MR. KESHAVARZ: Do you have the  
 4 affidavits of merit for the other  
 5 cases?  
 6 MS. MOODY: Sure.  
 7 (Perusing documents.)  
 8 No, I don't.  
 9 THE WITNESS: I'm not trying to be  
 10 difficult. But you're asking me to  
 11 attest to something that is very broad.  
 12 (Whereupon, an off-the-record  
 13 discussion was held.)  
 14 MR. KESHAVARZ: Let's mark this as  
 15 the next exhibit, please.  
 16 (Whereupon, the aforementioned  
 17 Affidavit of Merit (LR Credit 13, LLC  
 18 vs. Jose Guzman) was marked as  
 19 Plaintiff's Exhibit 5 for  
 20 identification as of this date by the  
 21 Reporter.)  
 22 Q. (Perusing document.)  
 23 I'm showing you what's been marked  
 24 as Plaintiff's Exhibit Number 5. Is this  
 25 the affidavit of merit that you signed in

106

1 T. FABACHER  
 2 the case of LR Credit against Jose Guzman?  
 3 A. Can I read it?  
 4 Q. Take your time. Please.  
 5 A. That's fine.  
 6 (Perusing document.)  
 7 Okay.  
 8 Q. So, the question is, looking at  
 9 Exhibit 5, is that the affidavit of merit in  
 10 the case of LR Credit 13 versus Jose Guzman  
 11 that you signed?  
 12 A. That is my signature, correct.  
 13 Q. And is there some sort of  
 14 electronic form that was somewhere on Mel  
 15 Harris's computer system that had the text  
 16 as Exhibit 3 and 5, other than the specific  
 17 information for the plaintiff and defendant,  
 18 like, the name of the original creditor, the  
 19 name of the defendant, the name of the  
 20 plaintiff, the amount of the debt, and so  
 21 forth? Is there a form that existed on Mel  
 22 Harris's computer system that is Exhibit 3  
 23 and 5 without all that specific identifying  
 24 information?  
 25 MR. MILLS: Objection.

107

1 T. FABACHER  
 2 A. So, I'm trying to find out -- so,  
 3 can I ask back to say -- if I understand  
 4 your --  
 5 Q. If you --  
 6 A. -- question --  
 7 Q. -- want to clarify --  
 8 MR. SCHER: Just answer the  
 9 question.  
 10 Q. -- if you want -- clarify, I'll  
 11 ask him.  
 12 A. Yes, please clarify. Because  
 13 you're saying that all of this is one  
 14 document.  
 15 Q. Other than the -- the specific  
 16 texts that refers to the plaintiff -- the  
 17 specific defendant, the specific account  
 18 number --  
 19 A. Okay. Can I -- can --  
 20 Q. Take your time.  
 21 A. Yeah. So, can I mark on it?  
 22 Q. No. But you could point to  
 23 something if --  
 24 A. Okay.  
 25 Q. -- you don't --

108

1 T. FABACHER  
 2 A. So, you're talking about LR Credit  
 3 13. You're talking about Jose Guzman, the  
 4 defendant?  
 5 Q. Yes.  
 6 A. My name (indicating)?  
 7 Q. Yes -- well, not your name. Well,  
 8 go ahead.  
 9 A. No, I'm --  
 10 Q. Yes.  
 11 A. Okay. The plaintiff (indicating)?  
 12 Q. Yes.  
 13 A. The type of company?  
 14 Q. Yes.  
 15 A. Are you also referring to the --  
 16 the plaintiff?  
 17 Q. The --  
 18 A. -- the original creditor?  
 19 Q. Okay.  
 20 A. Okay. And the balances?  
 21 Q. Yes.  
 22 A. Okay. So, are you saying  
 23 everything else comes from one document?  
 24 Q. One document or merged from --  
 25 well, let's take it one at a time.

27 (Pages 105 to 108)

109

1 T. FABACHER  
 2 A. Right.  
 3 Q. Is there one document that is  
 4 everything -- strike that.  
 5 I'm going to take it one at a  
 6 time. The specific items you just  
 7 identified, can I just call it the specific  
 8 -- specific items? Would you understand  
 9 that to mean --  
 10 A. Can we --  
 11 Q. -- shorthand?  
 12 A. -- can we call it a -- data from  
 13 the database?  
 14 Q. Okay. So, the items you just  
 15 listed, we'll call that data from the  
 16 database. Because that's what it is, right?  
 17 It's data from the database?  
 18 A. Not all of it but.  
 19 Q. Pretty much?  
 20 A. Yes.  
 21 Q. Okay. Now, other than the data  
 22 from the database, is there a document that  
 23 contains the other information that is on  
 24 Exhibit 3 and 5?  
 25 MR. MILLS: Objection.

110

1 T. FABACHER  
 2 A. Now, what do you mean by other?  
 3 Like, everything else?  
 4 Q. Yes.  
 5 MR. MILLS: Objection.  
 6 A. No.  
 7 Q. Most of the other information --  
 8 A. What does most mean?  
 9 Q. You don't know what the word most  
 10 means?  
 11 A. No, but -- you know, you -- I'm --  
 12 I'm a computer programmer. Most is -- most  
 13 does not exist in computer programs.  
 14 That's, like, about paying your taxes.  
 15 Somehow the IRS doesn't like it. It has to  
 16 be exact.  
 17 Q. The information other than what  
 18 we're calling the data from the database  
 19 that exists in the affidavits of merit that  
 20 are Exhibit 3 and 5, where does that  
 21 information come from?  
 22 MR. MILLS: Objection.  
 23 A. Which information?  
 24 Q. The information on the -- on the  
 25 affidavits of merit, other than the data

111

1 T. FABACHER  
 2 from the database.  
 3 MR. MILLS: Objection.  
 4 A. Okay. But it comes from a hard  
 5 drive.  
 6 Q. Okay. A hard drive. In what way?  
 7 A. It depends -- which -- which --  
 8 which one are you -- the -- it's -- it's  
 9 everything. So, what are you -- are you  
 10 talking about the notary? The notary  
 11 information?  
 12 Q. All right. The notary  
 13 information, that would not be data from the  
 14 database, or would it?  
 15 A. That is not.  
 16 Q. Okay. So, we'll just call that  
 17 the notary information, okay?  
 18 A. Okay.  
 19 Q. Other than the notary information  
 20 and the data from the database, where does  
 21 the rest of the information that goes on the  
 22 affidavit of merit come from?  
 23 MR. MILLS: Objection.  
 24 A. Can we -- want to go through --  
 25 line by line and go through it?

112

1 T. FABACHER  
 2 Q. If you'd like, sure.  
 3 A. Great. So -- so, my name. So,  
 4 when I generated this, it would ask me my  
 5 name.  
 6 Q. Yes.  
 7 A. So, I typed it in, all right? And  
 8 then I -- so, I'm -- I take this out. And  
 9 all of the -- the -- the data from the  
 10 database, I -- I verify independently before  
 11 the affidavit is printed, okay? And then  
 12 there's a lot of conditional logic. Like,  
 13 for example, retail charge account?  
 14 Q. Yes.  
 15 A. Okay. I have to -- that is  
 16 entered. That has to be -- you know, to --  
 17 it's -- it's not on a form.  
 18 Q. Okay. But the rest of the  
 19 information other than the data from the  
 20 database, the notary, your name, and whether  
 21 it says retail charge account, that comes  
 22 from a form? Is that what you're saying?  
 23 Because you used the word form. So, what  
 24 did you mean by the word form, the way you  
 25 just used it?

28 (Pages 109 to 112)

113

1 T. FABACHER  
 2 A. Okay. It --  
 3 MR. MILLS: Objection.  
 4 A. -- for a form, there's text.  
 5 That's -- the technical word we'll use for  
 6 text is a form. So, anything that deals  
 7 with a -- a form or a string -- we call it a  
 8 string. Actually, it's a -- the technical  
 9 word is a string.  
 10 Q. So, is a string for the affidavits  
 11 of merit everything -- that you signed  
 12 everything other than the data from the  
 13 database, the notary, your name, and --  
 14 A. So, just these two (indicating)?  
 15 I'm -- I'm -- I'm just attesting to these  
 16 two, correct?  
 17 Q. Well, let's start here  
 18 (indicating)?  
 19 A. Okay.  
 20 Q. Is -- is everything else that  
 21 you're -- that goes into this -- these  
 22 documents come from what you called a form a  
 23 moment ago?  
 24 MR. MILLS: Objection.  
 25 A. Is that one form, or multiple

114

1 T. FABACHER  
 2 forms?  
 3 Q. You tell me.  
 4 A. Okay. It's all conditional. So,  
 5 it's -- it's everything -- is it -- for --  
 6 how -- if it's a retail charge agreement,  
 7 that's -- that could -- that could come from  
 8 one logic part. If it's a loan, it -- then  
 9 the affidavit is different. If it's  
 10 medical, the affidavit is different. If  
 11 it's a health club, the affidavit is  
 12 different.  
 13 Q. Okay. Well, let me ask you a -- a  
 14 more narrow question then.  
 15 A. Okay.  
 16 Q. Does the form, as you used the  
 17 term form --  
 18 A. Yeah, yeah, yeah.  
 19 Q. -- that wasn't my word --  
 20 A. No, that's fine. You -- you keep  
 21 on asking me to use -- can we just use the  
 22 word string?  
 23 Q. Well, I think . . .  
 24 A. Because the technical -- I'm  
 25 trying -- you're asking me to give you --

115

1 T. FABACHER  
 2 Q. Can I -- if you -- if I used the  
 3 word form, would you understand that to mean  
 4 the same technical term --  
 5 A. I --  
 6 Q. -- as string?  
 7 A. -- I would prefer if I use the  
 8 word string. Because the string is the  
 9 proper word, so.  
 10 Q. The string.  
 11 A. Correct. So --  
 12 Q. Let's call it the string.  
 13 A. String text. Okay.  
 14 Q. String. Is the string text that  
 15 goes into the affidavits of merit that you  
 16 signed, are the words in the paragraph  
 17 underneath your name (indicating), is that  
 18 string the same for all the affidavits that  
 19 you -- merit that you signed while at Mel  
 20 Harris?  
 21 MR. MILLS: Objection.  
 22 A. I can't answer that.  
 23 Q. Is the string something that --  
 24 okay. Why not?  
 25 A. Because I can't see them.

116

1 T. FABACHER  
 2 Q. Do you remember if it -- well, for  
 3 the affidavits of merit that you did sign,  
 4 they said that -- that you were the  
 5 authorized and designated custodian of  
 6 records for the plaintiff.  
 7 MR. MILLS: Objection.  
 8 Q. Is that true?  
 9 A. I -- I can't testify to something  
 10 that I can't see. I can attest to these  
 11 two.  
 12 Q. Okay. Do you remember if the  
 13 terms authorized and designated custodian of  
 14 records for plaintiff was part of the string  
 15 for the affidavits of merit that you signed?  
 16 MR. MILLS: Objection.  
 17 A. On which affidavits?  
 18 Q. Any of the affidavits of merit  
 19 that you signed at Mel Harris, did they all  
 20 include the string authorized and designated  
 21 custodian of records for the plaintiff?  
 22 MR. MILLS: Objection.  
 23 A. Any, or all?  
 24 Q. All.  
 25 A. No, you said any. So, that's why

29 (Pages 113 to 116)

117

1 T. FABACHER  
 2 I want to be clear.  
 3 Q. Did any of them say that?  
 4 A. Yes.  
 5 MR. MILLS: Objection.  
 6 A. Here are two right here  
 7 (indicating).  
 8 Q. Did all of them say that?  
 9 A. No.  
 10 Q. Did most of the affidavits of  
 11 merit that you signed while you were at Mel  
 12 Harris --  
 13 A. Can you define most?  
 14 Q. The majority.  
 15 A. I can't attest to that because I  
 16 -- I -- I can't remember. I mean I -- I  
 17 can't attest to something -- what's a number  
 18 -- what's the majority?  
 19 Q. More than 50 percent.  
 20 A. I don't know.  
 21 MR. MILLS: Objection.  
 22 Q. Let me ask the question.  
 23 A. Yes.  
 24 Q. Did more than 50 percent of the  
 25 affidavits of merit that you signed while at

118

1 T. FABACHER  
 2 Mel Harris include the phrase that you were  
 3 the authorized and designated custodian of  
 4 records for the plaintiff?  
 5 MR. MILLS: Objection.  
 6 A. Could you repeat that?  
 7 Q. Sure. Would more than 50 percent  
 8 of the affidavits of merit that you signed  
 9 while you were working at Mel Harris include  
 10 the phrase that you were the authorized and  
 11 designated custodian of records for the  
 12 plaintiff?  
 13 A. I can't remember.  
 14 MR. MILLS: Objection.  
 15 Q. If we wanted to go and find out  
 16 which string was used for the affidavits of  
 17 merit that you signed while at Mel Harris,  
 18 how would we go about in finding that?  
 19 A. I'd have to look at the code. I  
 20 -- it -- it would be in the -- I'm not sure.  
 21 Q. It would be in the code?  
 22 A. It could be. I'm not -- I -- I  
 23 don't -- I haven't seen the code in -- in  
 24 years.  
 25 Q. But sitting here today, you

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1 T. FABACHER  
 2 believe it would be in the code?  
 3 A. I'm not sure.  
 4 Q. Would your testimony that you gave  
 5 back in Sykes five years ago be more  
 6 accurate in terms of what you did at Mel  
 7 Harris than it is now?  
 8 A. I don't know.  
 9 MR. MILLS: Objection.  
 10 A. Are you speculating that --  
 11 Q. I'm asking since that was closer  
 12 to the time five years ago when you worked  
 13 there, do you think that that might be more  
 14 accurate in terms of what your memory is?  
 15 MR. MILLS: Objection.  
 16 A. No. I'd have to read the  
 17 testimony. Correct? Testimony to what?  
 18 Q. Well, you -- generally speaking,  
 19 do you think your memory of what you did  
 20 while you were at Mel Harris would be more  
 21 accurate in 2012 than it would be today?  
 22 MR. MILLS: Objection.  
 23 MR. SCHER: You can answer.  
 24 A. I don't know.  
 25 Q. Next sentence, being on page

120

1 T. FABACHER  
 2 eight, is that next sentence true?  
 3 MR. MILLS: Objection.  
 4 A. Which -- which one are we on,  
 5 again?  
 6 Q. He further states --  
 7 A. Okay. I'll read it.  
 8 He further states that he, quote,  
 9 maintains the daily records and accounts,  
 10 bracket, for the collection entities (sic),  
 11 end of bracket, in the regular course of  
 12 business, including records maintained by  
 13 and obtained from, bracket, the collection  
 14 entity's, close bracket, assignor, end  
 15 quote.  
 16 Q. Is that sentence true?  
 17 MR. MILLS: Objection.  
 18 MR. SCHER: Same objection.  
 19 A. I -- I don't know what that's in  
 20 reference to. If they have -- I don't --  
 21 how do you -- do you want me to -- to make  
 22 it -- the -- in reference to what?  
 23 Q. Well, reading that sentence, is  
 24 the statements in that sentence true or  
 25 false?

30 (Pages 117 to 120)

121

1 T. FABACHER  
 2 MR. MILLS: Objection.  
 3 MR. SCHER: Same objection.  
 4 A. But I -- I have to know the -- the  
 5 relativity. So, I further stated -- so, it  
 6 has an ID. Can I see the line on the -- in  
 7 the -- it has an ID here. Can I see --  
 8 MR. SCHER: It's an Id.  
 9 THE WITNESS: Id?  
 10 MR. SCHER: It's not an ID, no.  
 11 THE WITNESS: See, I'm a  
 12 programmer. Got to have a reference  
 13 number.  
 14 Q. So, I guess -- well, it means what  
 15 it means. But let me ask you, the  
 16 affidavits of merit that you signed while  
 17 you were at Mel Harris, did it say that you  
 18 maintained the records and accounts,  
 19 bracket, for the collection agency, close  
 20 bracket, in the regular course of business?  
 21 A. What does that mean? I actually  
 22 quoted for the collection entities?  
 23 Q. I think the bracket means that you  
 24 insert that data from there.  
 25 So, the question is, in the

122

1 T. FABACHER  
 2 affidavits of merit that you signed while  
 3 you were at Mel Harris, did it state that  
 4 you maintained the daily records and  
 5 accounts for the collection agency in the  
 6 regular course of business including the --  
 7 the records maintained by and obtained from  
 8 collection agency's assignor? Is that true  
 9 or false?  
 10 MR. MILLS: Objection.  
 11 MR. SCHER: Same objection.  
 12 A. I can say that it matches this  
 13 Exhibit Number 3.  
 14 Q. And the question is, does -- the  
 15 sentence I just stated, is that in the  
 16 affidavits of merit that you signed while  
 17 you were at Mel Harris?  
 18 A. I'd have to see those affidavits.  
 19 I mean I signed a lot -- you know -- I'd  
 20 have to see those affidavits.  
 21 Q. All right. Or you could see the  
 22 code that's on the computer that's at Mel  
 23 Harris, right?  
 24 A. Well, that wouldn't be possible.  
 25 Because the code actually changed over time.

123

1 T. FABACHER  
 2 So, there is no timestamp of the code. So,  
 3 the code evolved also. So, you -- it -- you  
 4 can't say, this is the code -- that it did  
 5 it at this date. That would be impossible.  
 6 It's a -- it's a live document -- just like  
 7 any document -- it -- it doesn't keep --  
 8 from my understanding, it doesn't keep the  
 9 -- I don't believe they kept historical  
 10 records for the code at the time for -- for  
 11 the affidavits when they were signed.  
 12 Q. Okay. Next sentence. Is that  
 13 next sentence true or false?  
 14 MR. MILLS: Objection.  
 15 MR. SCHER: Same objection.  
 16 A. (Perusing document.)  
 17 Fabacher affirms that he is  
 18 thereby fully and personally -- okay --  
 19 Fabacher affirms that he is thereby -- a  
 20 quote -- thereby fully and personally  
 21 familiar with, and has personal knowledge  
 22 of, the facts and proceedings related (sic)  
 23 to the, bracket, the debt collections agency  
 24 (sic) a -- action, end quote.  
 25 Let's see here.

124

1 T. FABACHER  
 2 (Perusing documents.)  
 3 See, it doesn't -- this is quoted  
 4 -- doesn't even match this affidavit. So,  
 5 the quote under id, number two doesn't even  
 6 match this affidavit.  
 7 MR. SCHER: When you're saying  
 8 this affidavit, you're --  
 9 THE WITNESS: The one -- Exhibit  
 10 Number 3. So, this is a quote, and it  
 11 doesn't match the affidavit you  
 12 presented me.  
 13 Q. When you -- did you ever work for  
 14 any of the -- well, strike that.  
 15 Did you ever work for LR Credit 1  
 16 through 23?  
 17 A. Was I employed?  
 18 Q. Were you ever employed by them?  
 19 A. No.  
 20 Q. Did you ever work for them?  
 21 MR. MILLS: Objection.  
 22 A. What does work mean?  
 23 Q. Do work on their behalf.  
 24 MR. MILLS: Objection.  
 25 A. What does that mean?

31 (Pages 121 to 124)

125

1 T. FABACHER  
 2 Q. Were you ever the custodian of  
 3 records for any of the LR Credit entities 1  
 4 through 23?  
 5 MR. MILLS: Objection.  
 6 You asked about 20 times.  
 7 Q. You can answer.  
 8 A. I was the custodian of record for  
 9 LR 18.  
 10 Q. Well, what do you mean by L -- LR  
 11 -- custodian of record for LR 18?  
 12 MR. MILLS: Objection.  
 13 A. The custodian of records.  
 14 Q. So --  
 15 A. It's a title.  
 16 Q. -- when you signed the affidavits  
 17 that are -- of merit that are Exhibit 3 and  
 18 Exhibit 4 (sic), both of them say that  
 19 you're the authorized and designated  
 20 custodian of records for the plaintiff,  
 21 correct?  
 22 A. Sentence number one?  
 23 Q. Yes.  
 24 A. Okay. It says, I am the -- I am  
 25 -- I am an authorized, not the. That was

126

1 T. FABACHER  
 2 incorrect.  
 3 Q. Go ahead.  
 4 A. I am an authorized and designated  
 5 custodian of record (sic) for the plaintiff  
 6 in the State of New York, that I maintain  
 7 the daily records and accounts in the  
 8 regular course of business, including the  
 9 records maintained by and obtained for (sic)  
 10 plaintiff's assignor, which were made and  
 11 maintained in the regular course of  
 12 business, and that I am thereby fully and  
 13 personally familiar with, and have personal  
 14 knowledge of, the facts and proceedings  
 15 relating to (sic) within action.  
 16 Q. Okay. And that language you just  
 17 read is the same for both Exhibit 3 and  
 18 Exhibits 4 (sic) the affidavit of merit for  
 19 Bueno and for Guzman, correct?  
 20 A. That's correct.  
 21 Q. Okay.  
 22 MR. MILLS: That's Exhibit 5, I  
 23 believe.  
 24 MR. KESHAVARZ: Oh. Three and 5.  
 25 Q. Now, let's take them one at a

127

1 T. FABACHER  
 2 time. And when you say in Exhibit 3 and 5  
 3 that you are the authorized and designated  
 4 custodian of records for the plaintiff in  
 5 New York -- State of New York, what do you  
 6 mean by that? What do you mean by custodian  
 7 of records?  
 8 MR. MILLS: Objection.  
 9 A. I mean I'm the custodian of  
 10 records.  
 11 Q. What do you mean by that?  
 12 A. The custodian of records.  
 13 Q. You don't work for any of the LR  
 14 Credit entities 1 through 23, correct?  
 15 MR. MILLS: Objection.  
 16 A. Can you -- what are 1 to 23?  
 17 There is no 1. From my understanding, there  
 18 is no LR Credit 1, LLC.  
 19 Q. What are the LR Credit entities  
 20 that you are aware of?  
 21 MR. MILLS: Objection.  
 22 A. I'm aware LR Credit 18, comma,  
 23 LLC.  
 24 Q. Anything else?  
 25 A. I do remember LR Credit 15, comma,

128

1 T. FABACHER  
 2 LLC. I remember LR Credit 10, comma, LLC.  
 3 That's -- I don't specifically recall the  
 4 exact names of each LLC.  
 5 Q. And by custodian of records, do  
 6 you mean that you have the -- the computer  
 7 system that you used at Mel Harris -- the  
 8 data that was transferred on behalf of LR  
 9 Credit 13 and 18?  
 10 MR. MILLS: Objection.  
 11 Q. Is that what you mean by custodian  
 12 of records?  
 13 MR. MILLS: Objection.  
 14 A. Could you repeat the question?  
 15 Q. I'm just trying to get --  
 16 A. No, I'm -- I'm just -- because  
 17 you're asking me a specific question. And  
 18 it has a specific title. It's custodian of  
 19 records.  
 20 Q. Okay. What records were you a  
 21 custodian of for LR Credit 18 and LR Credit  
 22 13 for Exhibits 3 and 5?  
 23 MR. MILLS: Objection.  
 24 A. I was the custodian for the data  
 25 that you see here on this affidavit.

32 (Pages 125 to 128)

129

1 T. FABACHER  
 2 Q. Okay. Were you the custodian for  
 3 any other records for LR Credit 13 in  
 4 Exhibit 3 or LR Credit -- excuse me. Strike  
 5 that.  
 6 Other than the data that is in  
 7 Exhibit 3 and 5, were you the custodian of  
 8 any other records for LR Credit 18 or 13?  
 9 A. What do you mean by any other  
 10 records?  
 11 Q. Well, you said -- well, you tell  
 12 me.  
 13 A. I mean you want me -- their --  
 14 their home address, their telephone numbers?  
 15 Q. Okay.  
 16 A. I mean I . . .  
 17 Q. When you say the records for  
 18 Exhibit 3 and Exhibit 5, what do you mean by  
 19 records?  
 20 MR. SCHER: Objection.  
 21 A. For here, I mean the records that  
 22 you see here on the affidavit. That's what  
 23 I -- what I'm attesting to.  
 24 Q. Do you mean anything else other  
 25 than that?

130

1 T. FABACHER  
 2 MR. MILLS: Objection.  
 3 A. From my understanding, what I  
 4 signed, I'm attesting to what is on this  
 5 affidavit.  
 6 Q. So, when you say records in  
 7 Exhibit 3 and 5, you mean the data that is  
 8 on Exhibit 3 and 5?  
 9 A. That's correct.  
 10 Q. Do you mean anything else?  
 11 MR. MILLS: Objection.  
 12 A. No.  
 13 Q. Okay. So, when you say -- and by  
 14 custodian, what do you mean?  
 15 MR. MILLS: Objection.  
 16 A. Custodian. It's a definition.  
 17 Q. Well, what do you mean by that?  
 18 A. I mean -- well, if you give me  
 19 a --  
 20 MR. MILLS: Objection.  
 21 A. -- a dictionary, I'll read the  
 22 definition. How do you -- how do you mean  
 23 by custodian? It has a legal definition,  
 24 sir.  
 25 Q. But -- well, you signed it. What

131

1 T. FABACHER  
 2 does it mean to you?  
 3 A. I -- means I'm the custodian of  
 4 record.  
 5 MR. MILLS: Objection before the  
 6 answer.  
 7 Q. Anything else?  
 8 MR. MILLS: Objection.  
 9 A. It means what I signed --  
 10 Q. Okay.  
 11 A. -- which is custodian of record.  
 12 Q. Moving on to the next -- the next  
 13 sentence -- the -- continuing that sentence  
 14 from both Exhibit 3 and 5, by the daily  
 15 records, you mean the information that's in  
 16 the affidavits of merit that's -- that's 3  
 17 and 5, correct?  
 18 A. Can you -- the sentence? I'm  
 19 sorry. I apologize. Which sentence are you  
 20 referring to?  
 21 Q. Continuing on, where it says, I  
 22 maintain the daily records and accounts in  
 23 the regular course of business. And then it  
 24 says, including the records maintained and  
 25 obtained from the plaintiff's assignor.

132

1 T. FABACHER  
 2 Other -- do you mean anything other than the  
 3 information that's reflected in the  
 4 affidavits of merit that's Exhibit 3 and 5?  
 5 MR. SCHER: Note my objection.  
 6 MR. MILLS: Opinion as well.  
 7 A. No. I'm only attesting to -- to  
 8 whatever the -- what I mean here is -- is --  
 9 I'm basically saying that I maintain this  
 10 data.  
 11 Q. So, the -- when you say records  
 12 and accounts, you -- as you say in Exhibit 3  
 13 and 5, you mean only the information in the  
 14 affidavit of merit; is that correct?  
 15 MR. SCHER: Note my objection.  
 16 MR. MILLS: Objection.  
 17 A. No. I am saying -- no, I -- I am  
 18 basically saying that I'm attesting to what  
 19 you see here. It doesn't say only.  
 20 Q. What else are you attesting to?  
 21 What other records or accounts --  
 22 A. I don't --  
 23 Q. -- do you have --  
 24 A. -- I can't give you an answer. If  
 25 you ask me a specific question, I will

33 (Pages 129 to 132)

133

1 T. FABACHER  
 2 answer you.  
 3 Q. Do you have -- when you said --  
 4 we've already established -- right? -- that  
 5 when you say the words of records, you mean  
 6 the information that's in the text of the  
 7 affidavit of merit that's Number 3 and  
 8 Number 5, correct? We've established it?  
 9 A. I said it included it.  
 10 Q. But it -- does it mean anything  
 11 else? When you say the -- the records, do  
 12 you mean anything else?  
 13 MR. MILLS: Objection.  
 14 A. I don't know -- what do you mean  
 15 by anything else?  
 16 Q. You mean the data that's in  
 17 Exhibit 3 and 5, correct?  
 18 A. I think the -- what are you --  
 19 talking -- you know, sir, you want their ZIP  
 20 Code? You want their -- their -- there are  
 21 five -- I'm a computer programmer. You have  
 22 to give me the field, and you have to give  
 23 me the string which I can attest to.  
 24 Q. Well --  
 25 A. I mean what are you looking for?

134

1 T. FABACHER  
 2 Their -- their -- their -- their -- their  
 3 GPS coordinates?  
 4 Q. I have no idea. I'm trying to  
 5 figure --  
 6 A. So, I'm --  
 7 Q. -- out --  
 8 A. -- asking you --  
 9 Q. -- when you swear under oath --  
 10 A. And I --  
 11 Q. -- that --  
 12 A. -- take that seriously. And  
 13 you're asking me -- very general.  
 14 (Whereupon, an off-the-record  
 15 discussion was held.)  
 16 Q. So, my question is very specific.  
 17 A. (Indicating.)  
 18 MR. SCHER: You're ready to jump  
 19 in and give more answer.  
 20 THE WITNESS: I didn't.  
 21 MR. SCHER: Let him ask the  
 22 question.  
 23 THE WITNESS: I know. My mother  
 24 would not be happy. Okay.  
 25 Q. When you say in the first

135

1 T. FABACHER  
 2 paragraph of the -- of the affidavits of  
 3 merit that are Exhibit 3 and 5, the word --  
 4 A. Could I see Number 5, please?  
 5 You're asking me to testify to something I  
 6 can't see.  
 7 Q. The first paragraph in Exhibit 3  
 8 and 5 are the same; is that correct?  
 9 A. Well, I -- can you -- can I see  
 10 it, please?  
 11 Q. Please take your time  
 12 (indicating).  
 13 A. (Perusing documents.)  
 14 Okay. Please.  
 15 Q. Those two paragraphs are the same,  
 16 correct?  
 17 A. Let me read it.  
 18 (Perusing documents.)  
 19 Yes, they are the same. Yes, they  
 20 are the same.  
 21 Q. Okay. So, when you say custodian  
 22 of records, let's take them one at a time,  
 23 what do you mean by the term records?  
 24 MR. MILLS: Objection.  
 25 A. I mean the term records.

136

1 T. FABACHER  
 2 Q. Do you mean the records of  
 3 anything other than what's reflected in the  
 4 affidavits of merit themselves that's  
 5 Exhibit 3 and 5?  
 6 MR. MILLS: Objection.  
 7 A. I don't know what you mean by  
 8 means of records but -- do you have the  
 9 specific example?  
 10 Q. Well, you used the word records.  
 11 So, I'm trying to find out what specific  
 12 records do you mean.  
 13 A. Do you -- if you ask me a specific  
 14 question, I'll give you a specific answer.  
 15 Q. Okay. In the affidavit of merit  
 16 that's Exhibit 3, when you use the word  
 17 records, what do you mean?  
 18 MR. MILLS: Objection.  
 19 A. Records.  
 20 Q. Do you mean records other than the  
 21 information that's reflected in Exhibit 3?  
 22 MR. MILLS: Objection.  
 23 A. I mean records. I didn't -- I  
 24 don't mean anything other -- other than it  
 25 says. It says, the records for the

34 (Pages 133 to 136)

137

1 T. FABACHER  
 2 plaintiff.  
 3 Q. I understand that but my question  
 4 is this. When you use the word records, do  
 5 you mean records of anything other than  
 6 what's Exhibit 3?  
 7 MR. MILLS: Objection.  
 8 A. In this particular reference?  
 9 Q. Yes.  
 10 A. I believe I am referencing --  
 11 well, I can't -- I don't know this. Because  
 12 in this case, I am saying that I am  
 13 maintaining the records, and I am attesting  
 14 to this value. I -- I don't think I am  
 15 saying I am maintaining all of their  
 16 records, all of their data.  
 17 Q. That's fine. I'm -- I'm not  
 18 trying to say you are. I'm just trying to  
 19 figure out when you use the words of  
 20 records, you use it twice --  
 21 A. Actually, I use it --  
 22 Q. -- three times --  
 23 A. Four. Four times, actually.  
 24 Q. All right. Four times. The four  
 25 times you used the word records in the

138

1 T. FABACHER  
 2 affidavits of merit that are Exhibit 3 and  
 3 Exhibit 5 for these specific affidavits of  
 4 merit --  
 5 A. For these specific affidavits.  
 6 Q. -- what do you mean by the words  
 7 records as -- specifically as to Exhibits 3  
 8 and 5?  
 9 A. I --  
 10 MR. MILLS: Objection.  
 11 A. -- specifically mean records.  
 12 That's what they are. It's a -- it's a --  
 13 it's a definition. It is a record.  
 14 Q. Okay. And you mean the records  
 15 that are reflected in the affidavits of  
 16 merit themselves; is that right?  
 17 A. I don't understand that question.  
 18 Q. Do you mean -- by records, do you  
 19 mean anything else other than the  
 20 information that's reflected in Exhibit 3  
 21 and 5?  
 22 A. I -- I'm -- do I -- do I -- what  
 23 is mean? You know, I -- I don't know what I  
 24 mean. I don't know what I mean. What does  
 25 mean mean? Like, what do I mean? Am I --

139

1 T. FABACHER  
 2 are you saying, am I speculating, that I --  
 3 I -- I maintain more than what is here? I  
 4 can't answer that question.  
 5 Q. Well, I -- I didn't put the words  
 6 records down -- the word records down --  
 7 A. I did. And that's -- and that's a  
 8 definition. You're asking me to define  
 9 records. And I'm giving you the definition.  
 10 If you get a Webster dictionary, we can look  
 11 it up.  
 12 Q. Well, I'm -- I'm not trying to use  
 13 the word records generally. You swore as to  
 14 what records four times?  
 15 A. That's correct. And I used the  
 16 same word. And I'm giving you back the word  
 17 I used four times which is records.  
 18 Q. Okay. My question is this --  
 19 A. Yes, sir.  
 20 Q. -- when you use the word records  
 21 in these two affidavits of merit --  
 22 A. That's correct.  
 23 Q. -- do you mean anything other than  
 24 the information that's in these two specific  
 25 affidavits of merit?

140

1 T. FABACHER  
 2 A. Can you give me an example of  
 3 another?  
 4 Q. I don't know. But you said  
 5 records. So --  
 6 A. And I'm --  
 7 Q. -- did you --  
 8 A. -- giving you record -- I'm sorry.  
 9 Go ahead. I'm sorry.  
 10 Q. Did you mean records of anything  
 11 other than the affidavits of merits  
 12 themselves?  
 13 A. I -- I -- I don't know how to  
 14 answer that question.  
 15 Q. Sure. When you use the records,  
 16 specifically --  
 17 A. Right there.  
 18 Q. -- as to Mr. -- Miss Bueno and Mr.  
 19 Guzman, specifically as to these people --  
 20 A. That's correct.  
 21 Q. -- okay -- do you mean anything  
 22 other than the information that is reflected  
 23 in the affidavits of merits themselves?  
 24 A. I don't -- I -- I don't know  
 25 what it infers -- I don't -- I -- I --

35 (Pages 137 to 140)

141

1 T. FABACHER  
 2 records stands for records.  
 3 Q. I'm not trying to get the  
 4 definition of records generally --  
 5 A. Well, I -- but you're -- you're  
 6 asking me under -- to -- something that I --  
 7 that I signed under oath. And now I'm  
 8 testifying for -- and you're asking me to  
 9 give you a general definition. If you -- I  
 10 -- I -- I -- I can't answer that question  
 11 because . . .  
 12 Q. What records -- and I'm going to  
 13 try to get at it in a different way.  
 14 A. There you go.  
 15 Q. I might succeed. I might fail.  
 16 But at least try.  
 17 A. Try.  
 18 Q. When you say records in Exhibit 3  
 19 and 5, you mean electronic information  
 20 that's transferred to Mel Harris; is that  
 21 right?  
 22 MR. MILLS: Objection.  
 23 A. No. Not only electronic.  
 24 Q. Well, let me just strike -- ask  
 25 the question again. I --

142

1 T. FABACHER  
 2 A. Okay.  
 3 Q. -- it might be the same question.  
 4 Maybe it's not the same. Let me just ask  
 5 you this.  
 6 A. Okay.  
 7 Q. When --  
 8 MR. SCHER: I'm not saying  
 9 anything. I --  
 10 MR. KESHAVARZ: You're going to  
 11 say it.  
 12 MR. SCHER: (Inaudible.) Ask him  
 13 if it included electronic records,  
 14 electronic information as opposed to --  
 15 I think that's what he's getting at --  
 16 ask him -- ask him if it included  
 17 electronic records or electronic --  
 18 MR. KESHAVARZ: Well, I'm trying  
 19 to get to -- that's not what I'm trying  
 20 to get at. But I appreciate it.  
 21 Q. Are you, in fact -- were you, in  
 22 fact, the custodian of records for LR Credit  
 23 18 and 13?  
 24 MR. MILLS: Objection.  
 25 A. For these two cases?

143

1 T. FABACHER  
 2 Q. Yes.  
 3 A. The word the.  
 4 Q. Okay.  
 5 A. I was a, not -- not -- I was not  
 6 the. The means singular. I -- you want me  
 7 to testify? I'm --  
 8 Q. I'm listening. I'm listening.  
 9 A. -- I mean I'm not an attorney but  
 10 this is crazy. Are you guys going to --  
 11 have me testify and get me in trouble.  
 12 Q. I'm just trying to figure out --  
 13 A. Well, I'm --  
 14 Q. -- these --  
 15 A. -- not going to testify and put  
 16 myself in trouble, sir. I was one of the  
 17 custodian of records.  
 18 Q. For LR Credit 18 and 13?  
 19 A. That's correct.  
 20 Q. Are you aware who were any other  
 21 custodian of records?  
 22 A. I'm not.  
 23 Q. So, you are a custodian. And so,  
 24 when you -- for Exhibit 3 and 5, when you  
 25 say records, do you mean the records that

144

1 T. FABACHER  
 2 are the information reflected in Exhibit 3  
 3 and 5; is that correct?  
 4 A. It includes.  
 5 Q. What else, if anything, do the  
 6 records for Exhibit 3 and 5 include?  
 7 A. Say that again?  
 8 Q. When you use the word records for  
 9 Exhibit 3 and 5, do you -- do you -- do you  
 10 mean anything other than the information  
 11 that's reflected in the Affidavits of Merit  
 12 that is Exhibit 3 and 5?  
 13 MR. MILLS: Objection.  
 14 A. What do you mean by -- see, I'm  
 15 being -- I'm trying to -- to get -- for  
 16 example, I -- here, on the third paragraph,  
 17 it says retail charge account, okay? So,  
 18 you know, are you talking about something  
 19 like that? What do you mean by records? We  
 20 can go through every single field. I need  
 21 you to -- explain to me. Because I'm a  
 22 computer person. Is it -- you're saying  
 23 it's coming from a database? Did I read it?  
 24 You're asking me to speculate.  
 25 Q. I'm not. I'm not trying to do

36 (Pages 141 to 144)

145

1 T. FABACHER  
 2 that.  
 3 A. That's what you're doing.  
 4 Q. All right.  
 5 (Whereupon, an off-the-record  
 6 discussion was held, and a luncheon  
 7 recess was taken.)  
 8 (Thereupon, the following  
 9 proceedings were had without Jessica  
 10 Moody in the deposition suite.)  
 11 MR. MILLS: Before you start, I  
 12 would just like to pose an objection to  
 13 the video recording of the deposition  
 14 of the witness. We object to that.  
 15 That's on the record.  
 16 MR. KESHAVARZ: All right.  
 17 MR. SCHER: Well, while we're  
 18 stating things on the record, I just  
 19 wanted to make sure that we know that  
 20 the witness is reserving the right to  
 21 review his transcript.  
 22 MR. KESHAVARZ: All right. Not  
 23 really an objection.  
 24 Let's mark this as the next  
 25 exhibit, please.

146

1 T. FABACHER  
 2 (Whereupon, the aforementioned  
 3 Todd Fabacher LinkedIn page was marked  
 4 as Plaintiff's Exhibit 6 for  
 5 identification as of this date by the  
 6 Reporter.)  
 7 Q. (Perusing document.)  
 8 Take a look at Exhibit 6, and let  
 9 me know when you're done, sir.  
 10 A. (Perusing document.)  
 11 2001. Okay. I see it.  
 12 Q. Can you identify what Number 6 is?  
 13 A. It's -- it's mine -- it's me.  
 14 Q. It's your LinkedIn page?  
 15 A. Uh-huh.  
 16 Q. LinkedIn page -- of the  
 17 information on your LinkedIn page, is  
 18 Exhibit 6 true and correct?  
 19 A. Okay.  
 20 Q. Is it?  
 21 A. It looks like it, yeah.  
 22 Q. All right. So, let me go down to  
 23 the bottom of the first page where it says  
 24 Mel Harris & Associates -- Technologies --  
 25 2011 (sic) to 2012. Does that refresh your

147

1 T. FABACHER  
 2 memory? Did you -- excuse me -- 2001 to  
 3 2012. Does that refresh your memory? Do  
 4 you believe you worked at Mel Harris between  
 5 2001-2012?  
 6 MR. SCHER: Objection to form.  
 7 A. Yeah. I guess. I don't -- yeah.  
 8 I guess -- I don't remember the dates but  
 9 yeah. I guess I put it in there. Sure.  
 10 Q. Okay. All right. Now, who is  
 11 Pinpoint Technologies?  
 12 A. It's a company.  
 13 Q. Okay. What's the relationship  
 14 between Pinpoint Technologies and Mel  
 15 Harris?  
 16 A. There is -- actually, I did not  
 17 work for Pinpoint Technologies. I was not  
 18 an employee. I -- I was -- I was a small  
 19 shareholder of it.  
 20 Q. Okay. What is Pinpoint  
 21 Technologies?  
 22 A. It was a -- it's a debt -- I  
 23 believe it's a debt holding company.  
 24 Q. Buyer of charged-off consumer  
 25 debts? Is that what you mean?

148

1 T. FABACHER  
 2 A. Yes.  
 3 Q. Who are the other owners of  
 4 Pinpoint?  
 5 MR. SCHER: Objection.  
 6 A. I'm not sure. I'm not -- I'm just  
 7 a member. I'm not -- I'm not a -- an  
 8 officer in it.  
 9 Q. Who are the other members?  
 10 MR. SCHER: Objection.  
 11 A. I'm not sure. I'm not an officer  
 12 in the -- in the -- in the company.  
 13 Q. I understand. Do you know who are  
 14 -- the other members are?  
 15 A. I think -- do I -- do I know one?  
 16 Yeah. I know Michael Young.  
 17 Q. Anyone else?  
 18 A. I don't -- this is speculation --  
 19 I don't -- I'm not -- again, I don't -- I  
 20 don't have the records to say, like, you  
 21 know, who is an actual member. I never -- I  
 22 don't know who the -- the -- all the owners  
 23 are.  
 24 Q. You don't remember any of the  
 25 members, other than yourself and Mr. Young?

37 (Pages 145 to 148)

149

1 T. FABACHER  
 2 A. I believe Kerry Lutz. But again,  
 3 it's speculation.  
 4 Q. Well, I'm just asking, do you know  
 5 if Kerry Lutz is one of the members of  
 6 Pinpoint Technologies?  
 7 A. I believe so.  
 8 Q. Okay. Other than Kerry Lutz,  
 9 Michael Young, and yourself, are there any  
 10 other members of Pinpoint Technologies?  
 11 A. I don't know. You'd need to check  
 12 the records.  
 13 Q. You don't know --  
 14 A. Yeah, I don't know. As I said,  
 15 we're just -- I was an investor.  
 16 Q. Okay. Is that still running? Is  
 17 that a -- still an active company?  
 18 A. I believe it is, yes.  
 19 Q. Okay. It's an LLC? Pinpoint  
 20 Technologies is an LLC?  
 21 A. I'm going to speculate. I -- I  
 22 don't know.  
 23 Q. You don't know. That's fine.  
 24 A. I don't know. Yeah, I'd have to  
 25 check on my tax returns. But I am -- I

150

1 T. FABACHER  
 2 would assume.  
 3 Q. All right. And how long has Pin  
 4 -- strike that -- Pinpoint Technologies is  
 5 the plaintiff in collection lawsuits, or do  
 6 you know?  
 7 A. Yes.  
 8 Q. Okay. And do you know if  
 9 judgments entered in the name of any of the  
 10 LR Credit entities were transferred into the  
 11 name of Pinpoint?  
 12 MR. MILLS: Objection.  
 13 A. I don't know of any.  
 14 Q. All right.  
 15 A. I cannot think of any, no.  
 16 Q. All right. The -- the -- the same  
 17 stuff that you did at Mel Harris is the same  
 18 stuff you did at Mel -- at Pinpoint  
 19 Technologies, generally speaking?  
 20 A. No.  
 21 Q. In what way they -- were they  
 22 different?  
 23 A. Pinpoint is -- is a -- is an LLC  
 24 -- that it -- it's a -- it doesn't write  
 25 software.

151

1 T. FABACHER  
 2 Q. Okay. All right. Who is the law  
 3 firm that Pinpoint Technologies uses to do  
 4 debt collection litigation?  
 5 A. One of the -- I think we use  
 6 several -- I think one of the firms was Mel  
 7 Harris.  
 8 Q. Okay. Was that the main firm you  
 9 used while Mel Harris was in existence?  
 10 A. I'm not an officer. I don't know.  
 11 I'm an investor.  
 12 MR. SCHER: Start -- start  
 13 wrapping it up. Pinpoint, they --  
 14 MR. KESHAVARZ: That's fine.  
 15 MR. SCHER: -- have nothing to do  
 16 with --  
 17 MR. KESHAVARZ: All right.  
 18 MR. SCHER: -- the litigation.  
 19 He's --  
 20 MR. KESHAVARZ: That's fine.  
 21 MR. SCHER: -- a non-party.  
 22 A. Yeah, I don't -- I mean -- I'm  
 23 not -- I'm just an investor.  
 24 Q. That's fine. That's fine.  
 25 A. Okay.

152

1 T. FABACHER  
 2 Q. Thank you.  
 3 A. I just --  
 4 Q. That's fine. That's good for the  
 5 technology --  
 6 A. Yeah.  
 7 Q. -- that's -- that's the whole  
 8 point of me bringing --  
 9 A. Yeah.  
 10 Q. -- this up.  
 11 A. Okay.  
 12 Q. Read the description of the work  
 13 you did at Mel Harris, and --  
 14 A. It's not very clear. Hold on.  
 15 (Perusing document.)  
 16 Q. -- and let me know when you're  
 17 done.  
 18 A. Okay.  
 19 Q. And all the statements in that  
 20 paragraph are true and correct?  
 21 A. Yes.  
 22 Q. Okay. And is all that information  
 23 in that paragraph, does that apply to your  
 24 work at Mel Harris?  
 25 A. I would say yes.

38 (Pages 149 to 152)

153

1 T. FABACHER  
 2 Q. Okay. So, the last sentence where  
 3 it says, these creative programs range from  
 4 state of the art restraining notice and  
 5 information subpoena automation to complete  
 6 litigation strategy, and comprehensive  
 7 collection programming, what do you mean by  
 8 that?  
 9 A. So, these are -- what I'm  
 10 speculating -- what I'm saying here is post  
 11 judgment. I'm -- I'm -- I'm not -- it's not  
 12 -- this is -- this is not regarding to  
 13 litigation. This would be all post  
 14 judgment.  
 15 Q. Okay. But is the computer program  
 16 you're talking about, that applies to  
 17 creating affidavits of merit --  
 18 A. No.  
 19 Q. It doesn't?  
 20 A. That's not what I'm -- they had --  
 21 did not have affidavits. These are  
 22 information subpoenas. I'm not writing  
 23 anything about affidavit of merits (sic)  
 24 here.  
 25 Q. Okay. Well, why is there a

154

1 T. FABACHER  
 2 different programming for post-judgment  
 3 collections as opposed to doing affidavits  
 4 of merit?  
 5 A. Because it's a different  
 6 application.  
 7 Q. But you -- you created both  
 8 applications?  
 9 A. Did I create both? I was one of  
 10 the programmers.  
 11 Q. Okay. Were you the main  
 12 programmer?  
 13 A. Depends what time of the year.  
 14 Some I was less. Some I would -- I would  
 15 say, you know -- yeah, it depends on the  
 16 time frame.  
 17 Q. All right. And the -- is there a  
 18 different name for the program for  
 19 pre-judgment and post-judgment collections?  
 20 A. Yeah, we -- we called it RNIS.  
 21 Q. And do you know what that stands  
 22 for?  
 23 A. Restraining notice information  
 24 subpoena.  
 25 Q. That's the name of the program?

155

1 T. FABACHER  
 2 A. I believe. It's -- rn timer.exe is  
 3 the name of the program.  
 4 Q. Okay. And what about for  
 5 pre-judgment litigation?  
 6 A. Pre-judgment is handled by  
 7 Debtmaster which I did not create.  
 8 Q. Do you know why they're two  
 9 different softwares?  
 10 A. No.  
 11 Q. Okay.  
 12 A. It was prior to me.  
 13 Q. The Debtmaster is prior to you?  
 14 A. Yes.  
 15 Q. And then you did the post-judgment  
 16 collection after that?  
 17 A. Correct.  
 18 Q. Okay. Now, the information that  
 19 goes into Mel Harris's computer system, is  
 20 there an integration between the data that's  
 21 in Samserv's electronic information and Mel  
 22 Harris's?  
 23 A. Could you be clear on that  
 24 question?  
 25 Q. Sure. I'm just -- what I'm trying

156

1 T. FABACHER  
 2 to get at is, like, affidavits of service  
 3 with dates and times and locations, in prior  
 4 testimony, I -- I think it was established  
 5 that that information is typed into a  
 6 database. Now --  
 7 A. What -- again -- again, be very  
 8 specific for me. So, what information?  
 9 Q. So --  
 10 A. Can I write this down? I want to  
 11 be clear.  
 12 Q. Whatever you like. I mean don't  
 13 write on the exhibits.  
 14 A. Yeah.  
 15 Q. But if you want to write it on a  
 16 piece of paper, it's fine --  
 17 A. Right.  
 18 Q. -- with me. It's up to you.  
 19 So, my understanding is, from  
 20 Samserv that they get a process server to go  
 21 out, and comes back. And he says he served  
 22 the process. And he fills out a form --  
 23 A. Okay. I -- I don't know any of  
 24 that.  
 25 Q. I know. I understand that.

39 (Pages 153 to 156)

157

1 T. FABACHER  
 2 A. Okay.  
 3 Q. I'm just trying to get to the data  
 4 part.  
 5 They fill out a form and -- where  
 6 they claim to have made service in a certain  
 7 way. People at Samserv typed the  
 8 information into their database, a Microsoft  
 9 Access database apparently --  
 10 A. Okay.  
 11 Q. -- is the name of the process  
 12 serve, the date of the service, the location  
 13 of the service, any other information that  
 14 goes to an affidavit of merit. So, were you  
 15 aware of that?  
 16 MR. LICHTMAN: Objection to form.  
 17 A. I was not.  
 18 Q. Okay. Now, do you know if any of  
 19 the information from Samserv regarding who  
 20 the process server is, the dates of service,  
 21 the locations of service, do you know if  
 22 that electronic information is integrated  
 23 with Mel Harris in any way?  
 24 A. It wasn't --  
 25 MR. LICHTMAN: Objection.

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1 T. FABACHER  
 2 A. -- it wasn't my area.  
 3 Q. Do you -- but even if it's not  
 4 your area, do you know if there was some  
 5 sort of integration between electronic  
 6 information from Samserv and the -- Mel  
 7 Harris's database --  
 8 MR. LICHTMAN: Objection --  
 9 Q. -- of programming?  
 10 MR. LICHTMAN: -- objection.  
 11 A. Could -- could you repeat the  
 12 question?  
 13 Q. Sure. The reason I -- I brought  
 14 this Exhibit 6 out was I was interested in  
 15 this program that automates the collection  
 16 process --  
 17 A. That's a post-judgment collection.  
 18 Q. Okay.  
 19 A. It's only post-judgment.  
 20 Q. That's the reason I brought it  
 21 out.  
 22 A. Yeah.  
 23 Q. So, I'm -- that was bringing me to  
 24 this line of questioning. So, for  
 25 example --

159

1 T. FABACHER  
 2 MR. KESHAVARZ: Mark this as  
 3 Exhibit 7.  
 4 (Whereupon, the aforementioned  
 5 Affidavit of service (LR Credit 18, LLC  
 6 vs. Agustina Bueno) was marked as  
 7 Plaintiff's Exhibit 7 for  
 8 identification as of this date by the  
 9 Reporter.)  
 10 Q. (Perusing document.)  
 11 So, I'm showing you what's been  
 12 marked as Plaintiff's Exhibit 7. This is  
 13 the affidavit of service by Samserv for my  
 14 client Agustina Bueno. Can you take a look  
 15 at that document, and let me know when  
 16 you're done.  
 17 MR. MILLS: Just to note, there  
 18 are no copies for me and counsel to  
 19 look at.  
 20 MR. KESHAVARZ: Here goes another.  
 21 There you go (handing document).  
 22 MR. MILLS: (Perusing document.)  
 23 A. (Perusing document.)  
 24 Okay.  
 25 Q. Okay. So, my question is, the

160

1 T. FABACHER  
 2 information that's in the Samserv affidavit,  
 3 in terms of the -- you know, the location of  
 4 service, the date, and --  
 5 A. Where is --  
 6 Q. -- time of service --  
 7 A. -- okay --  
 8 Q. -- and so forth --  
 9 A. -- where would that be? I just  
 10 see that -- that it says summons and -- oh,  
 11 you're saying -- it says -- so, I'm just  
 12 going to read it so I make sure I'm clear.  
 13 MR. SCHER: Well, don't read it  
 14 out loud if -- if you're just trying to  
 15 read -- understand it.  
 16 A. (Perusing document.)  
 17 So, I'm not an attorney. So, I  
 18 don't understand service -- so, I'm a --  
 19 Q. I just want -- I'm just interested  
 20 in the data.  
 21 A. Want me to read something, and you  
 22 can't -- I --  
 23 MR. SCHER: Hold on.  
 24 A. -- I don't understand?  
 25 MR. SCHER: Let him ask a

40 (Pages 157 to 160)

161

1 T. FABACHER  
 2 question.  
 3 THE WITNESS: Okay.  
 4 Q. So --  
 5 MR. SCHER: He interrupted you in  
 6 the middle of your question.  
 7 Q. All right. So, the data -- the  
 8 question is, is the data in the affidavit of  
 9 service, Exhibit 7, the location of service,  
 10 the name of the process server, the name of  
 11 the consumer, is all that information  
 12 somehow integrated between Samserv and Mel  
 13 Harris' system?  
 14 MR. LICHTMAN: Objection.  
 15 A. What do you mean by integrated?  
 16 Q. Can Mel Harris access  
 17 electronically the information that's in  
 18 Exhibit 7?  
 19 MR. LICHTMAN: Objection.  
 20 A. Electronically?  
 21 Q. Yes.  
 22 A. No.  
 23 Q. Can Mel Harris access the  
 24 information that's in Exhibit 7 in some  
 25 other way --

162

1 T. FABACHER  
 2 MR. LICHTMAN: Objection.  
 3 Q. -- other than electronic?  
 4 A. By paper.  
 5 Q. Okay. And Mel Harris does -- did  
 6 Mel Harris keep a scanned copy of the  
 7 affidavits of service?  
 8 MR. LICHTMAN: Objection.  
 9 A. I -- I -- I -- I -- possibly. I  
 10 don't -- I think -- I know -- I -- I don't  
 11 know if this one they did. I know they --  
 12 they did scan but I don't know what they  
 13 scanned.  
 14 Q. I mean one reason I'm asking you,  
 15 you talked about the post-judgment program  
 16 that you set up, right? One thing that  
 17 happens in post-judgment is -- and a  
 18 consumer sometimes has to -- moves to try to  
 19 vacate a judgment. And Mel Harris files a  
 20 -- a motion to oppose that. My -- my point  
 21 is that sometimes Mel Harris attaches an  
 22 affidavit of service. So, that's why I'm  
 23 wondering in your program, your  
 24 post-judgment program, does that integrate  
 25 anything about orders to show cause to

163

1 T. FABACHER  
 2 vacate judgments --  
 3 A. No. The --  
 4 MR. LICHTMAN: Objection.  
 5 Q. Okay.  
 6 A. -- the restraint program, that  
 7 would be the legal. That's a different  
 8 department. So, once it's -- goes to there,  
 9 then it's -- it's -- it would not be in my  
 10 program.  
 11 Q. Okay.  
 12 A. So, it -- it only deals with  
 13 active judgments. So, that -- the answer to  
 14 that would be no, from my understanding.  
 15 Q. All right. Well, let me ask you  
 16 this. If -- strike that.  
 17 If Mel Harris wanted to find out  
 18 the dates of service and locations of  
 19 service for Samserv serving for Mel Harris  
 20 -- okay? -- if they wanted to find that out  
 21 to see if the process servers were serving  
 22 at the same time in more than one location,  
 23 is there any way for Mel Harris to determine  
 24 that?  
 25 A. I don't know. I -- it was not my

164

1 T. FABACHER  
 2 department.  
 3 Q. Do you know who might know that?  
 4 A. Mel Harris.  
 5 Q. Anyone else?  
 6 A. I don't.  
 7 Q. Does Mel Harris himself do any of  
 8 the computer work?  
 9 A. What do you mean by computer work?  
 10 Q. I don't know. The programming,  
 11 the data management. Because -- because you  
 12 asked -- Mel Harris to ask him.  
 13 A. Well, he would know.  
 14 Q. Were you the -- who -- who did the  
 15 tech work at Mel Harris other than yourself?  
 16 A. Over the years, probably, like,  
 17 maybe seven or eight different people. I  
 18 don't even remember the names.  
 19 Q. Was there another main person that  
 20 did tech while you were there?  
 21 A. One guy was Oleg. He -- yeah,  
 22 Oleg. I don't know his last name.  
 23 Q. Does Mr. Harris himself do the  
 24 tech work at all for --  
 25 A. No.

41 (Pages 161 to 164)

165

1 T. FABACHER  
2 Q. Okay. So, would Mel Harris -- to  
3 your knowledge, would Mr. Harris know the  
4 tech as to whether Samserv's information is  
5 accessible by Mel Harris's firm?  
6 A. You --  
7 MR. LICHTMAN: Objection.  
8 A. -- would have to ask him.  
9 Q. Okay. He would -- he would be the  
10 person most likely to know?  
11 A. I don't know. I mean it was his  
12 -- his law firm.  
13 Q. All right. Let's see if we can  
14 finish up. Going back to Exhibit 4 -- see  
15 if we can finish up a couple of items on  
16 there.  
17 A. Okay.  
18 Q. (Perusing document.)  
19 Go to page seven -- no, eight.  
20 A. (Perusing document.)  
21 Eight.  
22 Q. Where were we at?  
23 A. We were on the second id -- I said  
24 ID -- which -- they quoted me. And that's  
25 actually not accurate. So, I just -- for

166

1 T. FABACHER  
2 the record.  
3 Q. Which quotes?  
4 A. Well, they put it -- this in  
5 quotes, and it's not what's on these  
6 affidavits --  
7 Q. Okay.  
8 A. -- it's not -- it's -- it's not  
9 verbatim.  
10 Q. The next sentence, it says each  
11 affidavit. Is that sentence true?  
12 MR. MILLS: Objection.  
13 Q. I need -- read it --  
14 A. Yeah. Each affidavit then  
15 provides information on the underlying debt,  
16 including the relevant account number,  
17 original creditor, and outstanding balance.  
18 Q. Okay. Is that statement true?  
19 A. No, it's not.  
20 Q. In what way?  
21 A. Well, because it makes an  
22 assumption that they're all credit card  
23 debts. You don't have -- you know, you have  
24 all kinds of debt. You have loans. You  
25 have gym membership. You have all

167

1 T. FABACHER  
2 varieties. So, that's inaccurate.  
3 Q. But that statement would be true  
4 for credit card debts?  
5 A. Not necessarily. Because I'm  
6 looking at your affidavit, and it doesn't.  
7 Q. Looking at Exhibit 5.  
8 A. Exhibit 5.  
9 Q. So, the next sentence, is the next  
10 sentence true?  
11 MR. MILLS: Objection.  
12 A. In preparing affidavit (sic) of  
13 merits (sic), Fabacher uses various database  
14 and software programs to import, sort, and  
15 check the competencies (sic) of  
16 electronic --  
17 MR. SCHER: (Inaudible.)  
18 A. -- I'm sorry? -- oh --  
19 completeness -- I'm sorry -- I apologize --  
20 I can't -- I don't have my glasses -- I  
21 didn't think I was going to read --  
22 completeness of electronic data received by  
23 the Leucadia -- that is spelled  
24 L-E-U-C-A-D-I-A -- defendants from the  
25 various creditors and debt sellers from whom

168

1 T. FABACHER  
2 they purchase debt, period.  
3 Q. Is that statement true?  
4 A. Let me go through that again and  
5 make sure. Preparing affidavit (sic) of  
6 merit, Fabacher uses -- that is true.  
7 Q. Okay. One down.  
8 A. One down.  
9 Q. The next sentence, is the next  
10 sentence true?  
11 MR. MILLS: Objection.  
12 A. (Perusing document.)  
13 Typically, Fabacher does not  
14 receive the original credit agreement (sic)  
15 between the account holders and the  
16 creditors.  
17 Q. Is that statement true?  
18 MR. MILLS: Objection.  
19 A. I don't agree with that.  
20 Q. In what way?  
21 A. I don't like typically. That's --  
22 that's -- that's speculative. And that's --  
23 that -- that's not necessarily -- I don't --  
24 I don't agree with it.  
25 Q. Do you think you typically do look

42 (Pages 165 to 168)

169

1 T. FABACHER  
 2 at it?  
 3 A. I --  
 4 Q. Or you just --  
 5 A. -- the typically -- can you tell  
 6 me some percentage? What's a percentage?  
 7 Are we talking 14 percent, 12 percent, 12 --  
 8 62 percent? What does typically mean?  
 9 Q. So, your dispute with the sentence  
 10 is you don't understand what the word  
 11 typically means; is that right?  
 12 A. That's correct.  
 13 Q. Okay. Are the majority -- the  
 14 instances -- is it true that a majority of  
 15 the instances, you don't receive the  
 16 original credit agreement between the  
 17 account holders and the creditors?  
 18 A. Well, what do you mean by original  
 19 agreement?  
 20 Q. I mean -- I'm just -- I'm just  
 21 trying to nail down the word --  
 22 A. No --  
 23 Q. -- typically. You don't know what  
 24 the --  
 25 A. -- no, because -- original

170

1 T. FABACHER  
 2 agreement, that's inaccurate. Because a lot  
 3 of times, the agreement is done over the  
 4 phone. You can get credit access over the  
 5 phone -- at the checkout counter now.  
 6 Get -- is that?  
 7 Q. Okay. All right.  
 8 A. It's -- it's not accurate.  
 9 Q. Okay. The next sentence, is the  
 10 next sentence true?  
 11 MR. MILLS: Objection.  
 12 A. (Perusing document.)  
 13 Instead, he receives a bill of  
 14 sale for the portfolio of debt (sic)  
 15 purchased that includes sample credit  
 16 agreements and warranties made by the seller  
 17 regarding the debts in the portfolio.  
 18 Q. Is that statement true?  
 19 MR. MILLS: Objection.  
 20 A. That's actually not true either.  
 21 Q. In what way?  
 22 A. Well, you have a whole chain of  
 23 title. You have from a -- a -- you have  
 24 billing statements. You have charge-off  
 25 statements. That's not accurate.

171

1 T. FABACHER  
 2 Q. Okay. But for the -- when LR  
 3 Credit gets -- when -- strike that.  
 4 When Mel Harris gets an account to  
 5 sue on -- gets an account to sue a consumer  
 6 on, it doesn't generally get the credit card  
 7 statements, right?  
 8 MR. SCHER: Are you talking about  
 9 the -- the Sykes decision? Are you  
 10 talking about now? Are --  
 11 MR. KESHAVARZ: I'm just --  
 12 MR. SCHER: -- not now but --  
 13 MR. KESHAVARZ: -- I'm just --  
 14 Q. Put aside -- put aside the order  
 15 for a second. I'm just asking you --  
 16 A. Okay.  
 17 Q. -- because you used the word  
 18 credit card statements. So, I'm just going  
 19 to ask you, isn't it true that for the vast  
 20 majority of the accounts that Mel Harris  
 21 sues upon that when it gets the account, it  
 22 doesn't have the credit card agreements; is  
 23 that true?  
 24 MR. MILLS: Objection.  
 25 A. That is not true.

172

1 T. FABACHER  
 2 Q. Okay. What percentage of the  
 3 accounts --  
 4 A. I have no idea. But I could tell  
 5 you that it's not true.  
 6 Q. But you don't know how much?  
 7 A. No, I don't.  
 8 Q. Next sentence, is the next  
 9 sentence true?  
 10 MR. MILLS: Objection.  
 11 A. So, that would be, in many  
 12 instances, such agreements do not exist.  
 13 And what is that? What agreements are we  
 14 speculating about now? That's actually very  
 15 untrue.  
 16 Q. In what way?  
 17 A. Are they -- from an agreement, are  
 18 you saying -- is that a chain of title?  
 19 Q. I don't know.  
 20 A. I don't know.  
 21 Q. Do you know if the warranties and  
 22 the sale of debts for -- that Mel Harris  
 23 sued upon?  
 24 MR. MILLS: Objection.  
 25 A. I do not.

43 (Pages 169 to 172)

173

1 T. FABACHER  
 2 Q. Okay. And are -- warranty, I mean  
 3 warranty of the accuracy of the information  
 4 for the debts that Mel Harris sues on, does  
 5 Mel -- let me restate the question.  
 6 A. Please.  
 7 Q. Are there warranties of the  
 8 accuracy of the information for the accounts  
 9 that are transferred to Mel Harris to sue  
 10 upon? Are there warranties of the accuracy  
 11 of the information?  
 12 MR. MILLS: Objection.  
 13 A. I'm not aware.  
 14 Q. Okay. Are there --  
 15 A. Well --  
 16 Q. Go ahead.  
 17 A. -- let me rephrase that. You have  
 18 the chain of title. But I -- I mean I --  
 19 I've -- that's the only -- I'm not aware of  
 20 other warranty . . .  
 21 Q. From other warranty --  
 22 A. I'm not aware of any.  
 23 Q. So, the specific question is, in  
 24 the sale -- in the sales of the accounts for  
 25 which Mel Harris sues, the chain in the --

174

1 T. FABACHER  
 2 is the chain of title make a -- warranties  
 3 about the accuracy of the data that's being  
 4 sent?  
 5 A. I don't know. I'm --  
 6 MR. MILLS: Object --  
 7 A. -- not an attorney.  
 8 MR. MILLS: -- objection before  
 9 that answer.  
 10 Q. Well, let me rephrase it  
 11 differently.  
 12 A. Yeah, please.  
 13 Q. No, no. That's fine.  
 14 A. So, that sentence is inaccurate.  
 15 Q. All right. So, let me -- like,  
 16 maybe I should just ask you the question  
 17 since it seems to make more sense. So, when  
 18 you get affidavits of merit to sign, is it  
 19 accurate that you get a stack of affidavits  
 20 of merit, you sign them, like, once out of  
 21 every 50 or so, you compare the data with  
 22 the affirmation -- affidavit with the -- the  
 23 screen? Is that essentially how you sign  
 24 the affidavits of merit?  
 25 MR. SCHER: When?

175

1 T. FABACHER  
 2 Q. While you worked at Mel Harris?  
 3 A. That's inaccurate.  
 4 MR. MILLS: Objection before the  
 5 answer.  
 6 Q. In what way?  
 7 A. Well, it's -- it's not -- you're  
 8 -- you're -- you're not -- everything is --  
 9 like that.  
 10 Q. Okay. How is it generally done?  
 11 A. Well, they are -- we get --  
 12 they're in batches. They're not always 50.  
 13 Q. Yes.  
 14 A. Sometimes it's one. It's a  
 15 maximum of 50.  
 16 Q. Per?  
 17 A. A maximum of 50. Never more than  
 18 50 at one time.  
 19 Q. Well --  
 20 A. In the agreement, you will see I  
 21 only do 350 a week, as is my testimony.  
 22 Q. Okay. And that's accurate?  
 23 A. That's my testimony.  
 24 Q. That's accurate?  
 25 A. That is my testimony.

176

1 T. FABACHER  
 2 Q. Okay.  
 3 A. Speculating that I'm lying?  
 4 Q. No. I was just trying -- no, I  
 5 wasn't -- I -- sir, I was not trying to --  
 6 A. Okay. Fine.  
 7 Correct? I read 350. I have it  
 8 on the record.  
 9 Q. That's fine. If you could go back  
 10 to page nine --  
 11 A. Okay.  
 12 Q. -- where it says, if it does exist  
 13 -- if they do exist -- where it starts  
 14 saying, if they do exist, is that sentence  
 15 true?  
 16 A. Okay. I'll read the sentence.  
 17 MR. MILLS: Objection.  
 18 A. (Perusing document.)  
 19 If they do exist, Fabacher's  
 20 standard practice does not entail reviewing  
 21 them before endorsing the (sic) affidavit of  
 22 merits (sic).  
 23 So, let -- let me -- because let's  
 24 read this sentence --  
 25 Q. Well, let -- I withdraw the

44 (Pages 173 to 176)

177

1 T. FABACHER  
 2 question.  
 3 Let me just ask -- let me just ask  
 4 you. What's the process like in filing --  
 5 signing -- filing -- tell me about the  
 6 process that you go through in signing the  
 7 affidavits of merit? Let me just ask you  
 8 straightaway.  
 9 A. Okay.  
 10 Q. Tell me what --  
 11 A. I'm a --  
 12 Q. -- the process is?  
 13 A. -- I approach the affidavits. So,  
 14 I maintain, you know. And we -- when we get  
 15 the data, I would get it. And then I would  
 16 look at this. And I would look in -- in --  
 17 in Debtmaster.  
 18 Q. So, you -- are you saying you  
 19 would compare the information in the printed  
 20 affidavit of merit and make sure the  
 21 information in the affidavit of merit  
 22 matches what's on the computer screen from  
 23 Debtmaster, correct?  
 24 A. That would be one thing.  
 25 Q. What else? What else would you

178

1 T. FABACHER  
 2 normally do in executing the affidavits of  
 3 merit?  
 4 A. I would read -- I would attempt to  
 5 read the retail charge agreement.  
 6 Q. You would attempt to do that. If  
 7 you sign a batch -- let me go back. When  
 8 you say you -- 50 at a time, what do --  
 9 A. No.  
 10 Q. -- you mean --  
 11 A. I didn't say 50 at a time.  
 12 Q. Go ahead.  
 13 A. I said a maximum of 50. And this  
 14 is what we ran into last time. I -- he  
 15 said, would you search at least one? I  
 16 said, yes. So, then what does the judge  
 17 write? He only reads one -- which is total  
 18 bullshit.  
 19 You got -- I'm not getting myself  
 20 put in this hole again, sir.  
 21 Q. I --  
 22 A. You guys stuck me last time. And  
 23 I'm not going to do it.  
 24 Q. I didn't -- stuck me last time. I  
 25 wasn't involved in Sykes.

179

1 T. FABACHER  
 2 A. Because half of this stuff is  
 3 inaccurate.  
 4 Q. Okay. All right. So, you signed  
 5 350 affidavits of merit a week, correct?  
 6 A. That's correct.  
 7 Q. Okay. Tell me about the normal  
 8 process about when do you sign them? You  
 9 sign them -- you said no more than 50 a day,  
 10 or -- you --  
 11 A. No.  
 12 Q. -- tell me.  
 13 A. I said 50 at a time.  
 14 Q. What do you mean by at a time?  
 15 A. They would never present me -- I  
 16 refused to sign more than 50 at a batch.  
 17 And a batch is at one time.  
 18 Q. I see. So, you might sign more  
 19 than one batch a day, you're just reading it  
 20 in one batch?  
 21 A. Potentially, yes.  
 22 Q. But I'm just asking because --  
 23 A. Yeah, sure. Potentially.  
 24 Q. Okay. So, you signed a batch --  
 25 no more than 50 at --

180

1 T. FABACHER  
 2 A. That's correct.  
 3 Q. -- per batch? Okay. Now, tell me  
 4 the normal process you go through in  
 5 executing the affidavit of merit?  
 6 MR. MILLS: Objection.  
 7 A. Okay. So, I would read the  
 8 affidavit --  
 9 Q. Yes.  
 10 A. -- like I've done here. I would  
 11 validate the data. And I would check if --  
 12 for example, if we had the retail charge  
 13 agreement, I would read the retail charge  
 14 agreement. I would read -- (perusing  
 15 documents) -- I would read the chain of  
 16 title if it was available. And all of these  
 17 vary.  
 18 Q. I'm just asking for typically.  
 19 Just --  
 20 A. Can't do it typically, sir. I --  
 21 I can't -- I'm not -- I -- with HIPAA laws  
 22 with medical, I'm not able to read the  
 23 patient -- I mean you can't say typically,  
 24 sir. It's -- it's -- because it's against  
 25 the law for me to read the medical

45 (Pages 177 to 180)

181

1 T. FABACHER  
 2 conditions for a HIPAA case. And I didn't  
 3 -- you know -- it's -- it's -- it's not a  
 4 typical situation.  
 5 Q. All right. So, do you normally --  
 6 when you do 350 affidavits of merit a week,  
 7 do you normally do them spread out over the  
 8 week? Do you normally do them on the same  
 9 day? Normally, how --  
 10 A. I would --  
 11 Q. -- does it --  
 12 A. -- I would do -- I -- I would  
 13 never do more than 50 a batch. And usually  
 14 I would do -- I would spread it throughout  
 15 the week.  
 16 Q. How many batches would you  
 17 normally do in a day?  
 18 A. I don't recall. It's -- it  
 19 varies. Sometimes one, sometimes more.  
 20 Q. Sometimes -- what's the range that  
 21 you would normally -- the batches that you  
 22 would normally do in a day?  
 23 A. I -- I can't -- I don't recall. I  
 24 -- this was ten -- over ten years. But not  
 25 more than a few.

182

1 T. FABACHER  
 2 Q. And not more than a few batches of  
 3 up to 50 a day?  
 4 A. I don't -- I don't recall.  
 5 Q. All right. Now, just -- looking  
 6 at my iPhone -- 350 divided by five is 70.  
 7 So, on average, you would do 70 affidavits  
 8 of merit a week -- a day -- excuse me --  
 9 right?  
 10 A. Okay.  
 11 Q. All right. So, how long do you  
 12 spend typically on each affidavit of merit?  
 13 MR. MILLS: Objection.  
 14 A. It depends on the affidavit of  
 15 merit. It depends on the affidavit of  
 16 merit.  
 17 Q. All right. I'm just -- if you're  
 18 doing 70 a day, I'm trying to see if you  
 19 normally just check the data from the  
 20 affidavit of merit with the screen? Is that  
 21 the normal process that you take when you  
 22 sign an affidavit of merit?  
 23 A. It's included.  
 24 Q. But is that the normal process  
 25 you'd take?

183

1 T. FABACHER  
 2 MR. MILLS: Objection.  
 3 A. It's not possible because you also  
 4 have -- there's -- there's other documents.  
 5 You have credit card statements. You have  
 6 chain of titles. You have credit card  
 7 agreements.  
 8 Q. I understand that the database --  
 9 the system has some of that information.  
 10 But if you're doing 70 a day, on average --  
 11 A. Okay.  
 12 Q. -- and 20 --  
 13 A. Each one --  
 14 Q. -- 20 percent of your day is doing  
 15 coding, 30 to 70 percent is doing management  
 16 information systems, it's not leaving a  
 17 whole bunch of time on a -- on a typical day  
 18 to do 70 affidavits of merit. So --  
 19 A. I don't know what -- see you're --  
 20 MR. SCHER: Wait for a question.  
 21 THE WITNESS: Well, no. He's --  
 22 he's --  
 23 MR. SCHER: Wait for a question,  
 24 please.  
 25 Q. Given that you -- not the only job

184

1 T. FABACHER  
 2 you do, the -- for most, the large majority,  
 3 90 percent-plus of the affidavits of merit  
 4 that you signed, you just compare the  
 5 information in the affidavit of merit with  
 6 what's on the Debtmaster screen; is that  
 7 true?  
 8 A. Ninety percent? No, that's not  
 9 true.  
 10 Q. How often?  
 11 A. I -- you know, it's not. You gave  
 12 me a number, 90 percent. And that is not  
 13 accurate.  
 14 Q. Okay. What is the accurate  
 15 amount?  
 16 A. I could -- don't know. It depends  
 17 on the affidavit. Is it a medical case? Is  
 18 it a health case? Is it a credit card case?  
 19 Q. Well, the vast -- like, 98  
 20 percent-plus of the collection lawsuits  
 21 filed by Mel Harris are for collect -- debt  
 22 -- credit card accounts, right?  
 23 A. I'm not --  
 24 MR. MILLS: Objection.  
 25 A. -- aware of that, no.

46 (Pages 181 to 184)

185

1 T. FABACHER  
 2 Q. Well, you signed the affidavits of  
 3 merit, right?  
 4 MR. MILLS: Objection.  
 5 Q. You -- you would know because you  
 6 signed the affidavits --  
 7 A. If you're --  
 8 Q. -- of merit --  
 9 A. -- asking me if it's a 98 percent,  
 10 98.1 percent? No, I'm not aware of the  
 11 exact percentage.  
 12 Q. But --  
 13 MR. MILLS: Objection before that  
 14 previous answer.  
 15 Q. But I mean you would -- would you  
 16 agree or not that almost all of the lawsuits  
 17 that Mel Harris files are for collection of  
 18 credit card debts?  
 19 MR. MILLS: Objection.  
 20 MR. LICHTMAN: Objection.  
 21 MR. SCHER: Objection.  
 22 A. I think it's speculation. No.  
 23 Q. You don't know?  
 24 A. No, that's -- that's -- line of  
 25 credits, it's speculation. That's -- no,

186

1 T. FABACHER  
 2 that's not accurate.  
 3 Q. You don't know one way or the  
 4 other?  
 5 A. Right.  
 6 Q. All right.  
 7 A. Telephone bills, it's not  
 8 accurate.  
 9 Q. I'm just asking, do you know one  
 10 way or the other --  
 11 A. No.  
 12 Q. -- if --  
 13 A. I do not.  
 14 Q. That's all on --  
 15 A. Yeah.  
 16 Q. All right. The chain of title, if  
 17 available, do you know if chain of title  
 18 were typically available for the -- when you  
 19 sign affidavits of merit?  
 20 MR. MILLS: Objection.  
 21 A. Typically, yes.  
 22 Q. Okay. And how many pages is a  
 23 chain of title?  
 24 A. It depends how many are in the  
 25 chain.

187

1 T. FABACHER  
 2 Q. Normally, how many -- what's the  
 3 range?  
 4 A. Could be one, could be three.  
 5 Q. Okay. And a chain of title would  
 6 be sold from the original creditor to one  
 7 debt buyer to another debt buyer, ultimately  
 8 to the plaintiff who files the lawsuit,  
 9 right?  
 10 A. That's inaccurate.  
 11 Q. In what way is that inaccurate?  
 12 A. It could also go to another bank.  
 13 Q. Yes?  
 14 A. One bank acquires another bank.  
 15 Q. Yes? Anything else that would  
 16 make that inaccurate?  
 17 A. Depend -- I'd have to look at it.  
 18 I don't -- I don't recall. But I could tell  
 19 you that it was not -- that was not an  
 20 accurate statement.  
 21 Q. All right. And what does chain of  
 22 title say?  
 23 MR. MILLS: Objection.  
 24 A. I don't -- it's been ten years.  
 25 How am I going to remember what a change of

188

1 T. FABACHER  
 2 title said?  
 3 Q. All right. What's a retail charge  
 4 agreement?  
 5 MR. MILLS: Objection.  
 6 Q. You used the term yourself, and --  
 7 A. Yes.  
 8 Q. I didn't know what that meant.  
 9 So, I'm just wondering what you meant?  
 10 A. A retail charge agreement is an  
 11 agreement that -- that is between the -- the  
 12 credit card holder and -- and the  
 13 credit-issuing institution.  
 14 Q. The card member agreement?  
 15 A. That's correct.  
 16 Q. But you don't know if a specific  
 17 card member agreement relates to a specific  
 18 consumer when you sign an affidavit of  
 19 merit, correct?  
 20 MR. MILLS: Objection.  
 21 A. That's inaccurate.  
 22 Q. In what way is that inaccurate?  
 23 A. The banks have their retail credit  
 24 card agreements by time. So, we are able to  
 25 know at a particular time what credit card

47 (Pages 185 to 188)

189

1 T. FABACHER  
2 agreements are applied to the bank.  
3 Q. You mean the way it should work.  
4 But you don't know specifically if that's  
5 the card member agreement that Miss Bueno  
6 had, for example?  
7 MR. MILLS: Objection.  
8 A. Again, I -- I -- I gave you my  
9 testimony. My understanding is that the --  
10 the credit card agreement for that time,  
11 what is universal. That is my  
12 understanding.  
13 Q. Okay. But you don't know if a  
14 specific credit card agreement is  
15 specifically tied to Miss Bueno, for  
16 example, or Mr. Guzman; is that true?  
17 MR. MILLS: Objection.  
18 A. It depends on the case. You know,  
19 sometimes -- sometimes we do. It depends.  
20 Q. The chain of title that you're  
21 talking about, they don't specifically  
22 reference the consumer for whose affidavit  
23 of merit you signed, correct?  
24 A. No, they do not.  
25 Q. Okay. So, looking at the chain of

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1 T. FABACHER  
2 title, you don't know one way or the other  
3 whether that chain of title includes the  
4 consumer like Mr. Guzman or Miss Bueno? You  
5 don't know if that specific chain of title  
6 applies to that, right?  
7 A. No, that's --  
8 MR. MILLS: Objection.  
9 A. -- inaccurate.  
10 Q. In what way is it inaccurate?  
11 A. In the -- because the chain of  
12 title references an electronic file.  
13 Q. Yes. And?  
14 A. It's on the -- it's part of the --  
15 the -- of the chain of title.  
16 Q. I know. But nothing in the chain  
17 of title says Miss Bueno or Mr. Guzman,  
18 right?  
19 MR. MILLS: Objection.  
20 Q. It says one company sold a batch  
21 of debt to another --  
22 A. No. It references --  
23 MR. MILLS: Objection.  
24 A. -- it references a -- my -- I -- I  
25 -- I don't remember. It -- it -- my

191

1 T. FABACHER  
2 understanding is that it referenced a -- a  
3 portfolio with -- with -- that references a  
4 file, that it's in the file.  
5 Q. What do you mean --  
6 A. I --  
7 Q. -- by that? References a file  
8 that's in the file --  
9 A. No. I mean -- I'm sorry -- it --  
10 it references an electronic file -- I --  
11 from the best of my memory.  
12 Q. Well, do you remember one way or  
13 the other if when you get a chain of title  
14 if it says the name Miss Guzman (sic) -- LR  
15 Credit 14 sold the Guzman account to LR 6,  
16 who sold it to LR 18? Do you know -- the  
17 chain of title doesn't reference the  
18 specific consumer, right?  
19 A. It --  
20 MR. MILLS: Objection.  
21 A. -- references a file.  
22 Q. It references a file. And a file  
23 is what?  
24 A. It's a file.  
25 Q. A spreadsheet?

192

1 T. FABACHER  
2 A. It's electronic representation --  
3 it's an electronic representation of data  
4 strings.  
5 Q. Spreadsheet of data? The name,  
6 address, phone --  
7 A. It's not --  
8 Q. -- number --  
9 A. -- a spreadsheet.  
10 Q. It's information such as name,  
11 address, phone number, date of birth, things  
12 like that, right?  
13 A. And more.  
14 MR. KESHAVARZ: Let's go off the  
15 record for a second.  
16 (Whereupon, a short recess was  
17 taken.)  
18 Q. Back on the record. Okay. So,  
19 the computer program at Mel Harris's system  
20 generates a judgment packet, correct?  
21 A. What is a packet?  
22 Q. Is a judgment packet included in  
23 an affidavit of merit -- well, strike that.  
24 The documents that are generated  
25 like the affidavit of merit, is that --

48 (Pages 189 to 192)

193

1 T. FABACHER  
 2 A. Which -- which exhibit are we  
 3 talking about?  
 4 Q. Three.  
 5 A. Exhibit 3. Okay.  
 6 Q. Is that generated by using  
 7 something called a fixed document with --  
 8 with fields?  
 9 A. I mean -- I don't -- I mean --  
 10 does it have fields? I think -- are you  
 11 talking about the database, or are you  
 12 talking about the document?  
 13 Q. Well, why don't we do this. Does  
 14 Exhibit 3 and 7, the -- no -- excuse me -- 3  
 15 and 5, the affidavits of merit --  
 16 A. So, this is yours. Hold on. Let  
 17 me give you that back -- (handing and  
 18 perusing documents) -- so, Exhibits 3 and 5.  
 19 Q. Okay. That's generated by using a  
 20 -- basically a mail merge system, correct?  
 21 In layman's terms.  
 22 A. Very simplification of it. I'll  
 23 go with yes.  
 24 Q. Okay.  
 25 A. Very simplification.

194

1 T. FABACHER  
 2 Q. And it merges information about an  
 3 account in some sort of form -- into some  
 4 sort of form --  
 5 A. String.  
 6 Q. -- string -- form -- whatever --  
 7 and that generates Exhibit 3 and 5, correct?  
 8 A. That's correct.  
 9 Q. All right. And that's the only  
 10 source of generating 3 -- Exhibits 3 and 5,  
 11 correct?  
 12 A. What do you mean by the only  
 13 source?  
 14 MR. MILLS: Objection.  
 15 Q. This mail merge is the source of  
 16 the information that leads to Exhibit 3 and  
 17 5 being signed; is that true?  
 18 A. Oh --  
 19 MR. MILLS: Objection.  
 20 A. -- absolutely not.  
 21 Q. In what way is it not true?  
 22 A. We drafted the . . .  
 23 Q. Go ahead.  
 24 A. The paralegal would draft  
 25 affidavits sometimes.

195

1 T. FABACHER  
 2 Q. Yes?  
 3 A. You know -- you know, we would --  
 4 we would manually -- sometime I would  
 5 manually type them.  
 6 Q. Yes? Is that it?  
 7 A. Yeah. We would . . .  
 8 Q. Other than that, that -- it would  
 9 be a true statement?  
 10 MR. MILLS: Objection.  
 11 Q. The mail merge would --  
 12 A. Okay.  
 13 Q. Go ahead.  
 14 A. Yeah. I mean they would -- you  
 15 either -- we either manually did it, or we  
 16 did it in the -- in the software.  
 17 Q. And the -- that mail merge system  
 18 is the only source of the information --  
 19 A. I --  
 20 Q. -- that generates the affidavit of  
 21 merit that's Exhibit 3 and 5?  
 22 A. That's --  
 23 MR. MILLS: Objection.  
 24 A. -- inaccurate.  
 25 Q. In what way?

196

1 T. FABACHER  
 2 A. I just said. It -- sometimes we  
 3 manually type them.  
 4 Q. Okay. Anything else?  
 5 A. Well, how else am I going to --  
 6 how else --  
 7 Q. And, again --  
 8 A. Yes, sometimes they're manually  
 9 typed. I don't know how else -- I did not  
 10 handwrite them.  
 11 Q. Got it. Thank you. All right.  
 12 A. So, the only way? No.  
 13 Q. Because sometimes you manually do  
 14 it?  
 15 A. Sometimes you manually do it.  
 16 Sure. Of course.  
 17 Q. All right. Thank you.  
 18 MR. KESHAVARZ: Let's mark this as  
 19 Exhibit 8.  
 20 (Whereupon, the aforementioned  
 21 data file produced by LR Credit in the  
 22 Guzman case (about 45 pages) was marked  
 23 as Plaintiff's Exhibit 8 for  
 24 identification as of this date by the  
 25 Reporter.)

49 (Pages 193 to 196)

197

1 T. FABACHER  
 2 Q. (Perusing document.)  
 3 I'm showing you what's been marked  
 4 as Exhibit 8. It's a document that's been  
 5 produced by LR Credit in the Guzman case.  
 6 When you spoke a few minutes about a data  
 7 file that's associated with the bills of  
 8 sale, do you mean -- and I said, do you mean  
 9 a spreadsheet, and you said, no, I mean a  
 10 data file. Is Exhibit Number 8 the type of  
 11 data file that you mean?  
 12 MR. LICHTMAN: Objection.  
 13 A. I have to look.  
 14 Q. Take your time.  
 15 A. (Perusing document.)  
 16 Okay. Could you ask the question  
 17 again?  
 18 Q. Sure. Is Exhibit Number --  
 19 MR. SCHER: 8.  
 20 Q. -- 8 the type of -- is it  
 21 information that's in that data file that  
 22 you were mentioning being transferred with  
 23 the chain of accounts -- chain of title?  
 24 MR. MILLS: Objection.  
 25 A. No. It's not.

198

1 T. FABACHER  
 2 Q. Do you know what Exhibit 8 is?  
 3 A. It looks like data.  
 4 Q. Do you know if Exhibit 8 is used  
 5 in some manner --  
 6 A. I -- I wouldn't know --  
 7 Q. -- by Mel Harris --  
 8 A. -- that would be speculation on my  
 9 part.  
 10 Q. -- by Mel Harris?  
 11 A. No. I --  
 12 MR. MILLS: Objection.  
 13 A. -- no. I don't know. It's  
 14 speculation.  
 15 Q. You don't know?  
 16 A. Yeah, I don't know.  
 17 Q. That's fine.  
 18 A. It could have been manually  
 19 entered. It could have been copied. I  
 20 don't -- I don't know.  
 21 Q. Okay.  
 22 A. But that would not be --  
 23 that's . . .  
 24 Q. That would not be what?  
 25 A. That -- it's not -- this is not a

199

1 T. FABACHER  
 2 file.  
 3 Q. Okay. What information is in the  
 4 file that you -- that is not in Exhibit 8,  
 5 or that is in Exhibit 8?  
 6 MR. MILLS: Objection.  
 7 MR. LICHTMAN: Objection.  
 8 MR. SCHER: Objection.  
 9 A. Excuse me?  
 10 (Whereupon, an off-the-record  
 11 discussion was held, and a portion of  
 12 the testimony was read back.)  
 13 Q. So, what basically I'm trying to  
 14 get at is the data file that you talked  
 15 about that goes into the affidavit of merit,  
 16 right?  
 17 MR. MILLS: Objection.  
 18 A. Say that again?  
 19 Q. Strike that. Just let's move on  
 20 from the line.  
 21 (Whereupon, an off-the-record  
 22 discussion was held.)  
 23 MR. KESHAVARZ: Now, let's go off  
 24 the record so I can check my notes, and  
 25 I think we're done.

200

1 T. FABACHER  
 2 (Whereupon, a short recess was  
 3 taken.)  
 4 Q. Okay. Back on the record. I'm  
 5 just going through a checklist of --  
 6 A. Sure.  
 7 Q. -- final questions I have. We  
 8 talked all the way at the beginning of the  
 9 deposition about what steps you took to  
 10 determine if you had any of the documents  
 11 asked for in the subpoena. And one thing  
 12 you did to check was check your Gmail  
 13 account, correct?  
 14 A. That's correct.  
 15 Q. Did you take any other steps to  
 16 determine whether you had or had access to  
 17 any of the documents that were subpoenaed to  
 18 be brought here today?  
 19 A. I looked. I have a little storage  
 20 closet -- and -- and just double-checked.  
 21 But I -- I knew I didn't but I -- I -- I --  
 22 I did check but I did not.  
 23 Q. Okay.  
 24 A. The only -- only time I had -- I  
 25 had one. They -- I was in a room. They

50 (Pages 197 to 200)

201

1 T. FABACHER  
2 dropped it. I read it. And that was it.  
3 No changes --  
4 Q. Okay.  
5 A. -- no changes, no nothing.  
6 Q. Did you take any other steps to  
7 look for documents?  
8 A. No.  
9 Q. Okay. Did you ask your other law  
10 firm that represented you in the Sykes case  
11 to give you a copy of the transcript from  
12 your deposition?  
13 A. No, I did not.  
14 Q. Okay. When you got the subpoena  
15 in this case, what is the first thing that  
16 you did?  
17 A. I looked in my e-mail for -- did  
18 you call me?  
19 Q. (Indicating.)  
20 A. You did.  
21 Q. That was the first -- yeah.  
22 A. And said check your e-mail, thank  
23 you, come on in, do the best you can.  
24 Q. Was I nice to you?  
25 A. You were very nice.

202

1 T. FABACHER  
2 Q. All right. So, are you paying Mr.  
3 Scher to represent you today?  
4 A. I don't know. Actually, to be  
5 honest with you -- he's not going to be --  
6 no -- well, actually -- I don't know. We  
7 haven't worked it out. I think he's here on  
8 his own. I didn't -- we don't have a -- me  
9 personally? No, I'm not.  
10 Q. Do you know who might be?  
11 A. No, I don't.  
12 Q. All right. How did you get Mr.  
13 Scher to represent you for your deposition  
14 today?  
15 A. I didn't even know he was coming.  
16 Q. All right.  
17 A. I found out. And he basically --  
18 the e-mail said, I'll see you there. I'm,  
19 like, oh, okay. I was going to come by  
20 myself.  
21 Q. Other than speaking with me, did  
22 you speak with anyone else about the -- the  
23 subpoena that you got --  
24 A. No.  
25 Q. -- on the deposition? Okay. Now,

203

1 T. FABACHER  
2 the data that was all in Mel Harris's  
3 database, I believe you want to call it the  
4 system, do you know if the information -- do  
5 you know where that information is now?  
6 A. No.  
7 Q. Do you know if some of that  
8 information has been transferred to Einstein  
9 law -- Einstein & Associates law firm? Do  
10 you know?  
11 A. I -- I -- I -- I left Mel Harris  
12 almost four years before. So, I -- I -- I  
13 was not part of any -- you know -- I was not  
14 there when they transferred, or anything  
15 like that.  
16 Q. But do you know if information was  
17 transferred from Mel Harris to Einstein, or  
18 do you not know?  
19 A. The -- the gentleman -- I do know  
20 Dick -- Dick -- I know his first name was  
21 Dick. I don't know his last name. But he  
22 passed away.  
23 Q. Was he the tech guy at --  
24 A. He is the tech guy.  
25 Q. -- at Mel Harris --

204

1 T. FABACHER  
2 A. At Mel Harris. And he came over,  
3 and then he passed away. So, you're out of  
4 luck on that one. And he did the conversion  
5 to -- I -- so, he's the only one that would  
6 know. And he's dead.  
7 Q. Well, I can't depose him.  
8 A. You can't depose him.  
9 Q. But you didn't --  
10 A. And he had run Mel Harris  
11 throughout the entire Sykes case -- through  
12 the Sykes case. I -- I did not prepare any  
13 of the materials. Dick did all of that.  
14 Q. All right. But do you know one  
15 way or the other --  
16 A. I don't know.  
17 Q. -- well, listen to the question --  
18 A. Oh.  
19 Q. -- if information was transferred  
20 from the Mel Harris law firm to the Einstein  
21 firm? Do you know one way --  
22 A. I don't know.  
23 Q. -- or the other? Okay. It's --  
24 fair enough.  
25 A. Yeah.

51 (Pages 201 to 204)

205

1 T. FABACHER  
 2 Q. Was there any particular reason  
 3 why you left Mel Harris?  
 4 A. I wanted to open up my own -- to  
 5 do mobile apps.  
 6 Q. So -- and just very briefly, what  
 7 do you do now?  
 8 A. I am the CEO of Digital  
 9 Pomegranate.  
 10 Q. I should look at your --  
 11 A. It's right there. Digital  
 12 Pomegranate is a -- a project for USAID and  
 13 World Bank. So, I decided to volunteer my  
 14 -- well, not volunteer -- but actually turn  
 15 it into a company. And it's kind of like a  
 16 Peace Corps. So -- yeah --  
 17 Q. Okay.  
 18 A. It's nice -- helping out poor  
 19 countries, I guess.  
 20 Q. Did you ever work for any of the  
 21 original creditors referenced in the  
 22 affidavits of merit like Sears, Chase Bank?  
 23 A. No.  
 24 Q. Were you ever a custodian of  
 25 records for the original creditors like

206

1 T. FABACHER  
 2 Sears or --  
 3 A. No. No, I was not.  
 4 MR. KESHAVARZ: All right. All  
 5 right. That's all I have. I pass you  
 6 to the opposing counsels, and they get  
 7 to ask you up to seven hours of  
 8 questions.  
 9 (Whereupon, an off-the-record  
 10 discussion was held while counsel  
 11 changed seats.)  
 12 MR. KESHAVARZ: Before the  
 13 questions start, can you try to pause  
 14 for a second between when he asks you a  
 15 question and when you answer, in case I  
 16 need to say objection, okay?  
 17 THE WITNESS: All right.  
 18 EXAMINATION BY  
 19 MR. MILLS:  
 20 Q. Mr. Fabacher, my name is Benjamin  
 21 Mills. I represent LR Credit 13, LLC in the  
 22 Guzman action, and LR Credit 18, LLC in the  
 23 Bueno action. I want to just turn your  
 24 attention back to Exhibits 3 and 5 that we  
 25 talked about today.

207

1 T. FABACHER  
 2 A. (Perusing documents.)  
 3 Okay.  
 4 Q. And you recognize, these are the  
 5 affidavits of merit?  
 6 A. I do.  
 7 Q. And one of them is LR Credit 13  
 8 versus Jose Guzman. That's Exhibit 3, I  
 9 think -- sorry -- it's Exhibit 5. And the  
 10 other one is LR Credit 18 against Agustina  
 11 Bueno. Those are the two affidavits you  
 12 have in front of you?  
 13 A. That's correct.  
 14 Q. Okay. We discussed -- you  
 15 discussed that the affidavits -- both  
 16 affidavits include a statement from you that  
 17 you were the authorized and designated  
 18 custodian of records for the plaintiff in  
 19 each action; is that correct?  
 20 A. That's correct.  
 21 Q. Okay. And you understand what  
 22 custodian of records means?  
 23 MR. KESHAVARZ: Objection to form.  
 24 A. I do.  
 25 Q. All right. How did you -- how did

208

1 T. FABACHER  
 2 you come to become the custodian of records  
 3 for the plaintiff in those actions?  
 4 A. I became -- I maintained the  
 5 database. And so, they -- they asked me to  
 6 be the custodian of records.  
 7 Q. Who is they when you refer --  
 8 A. I don't remember.  
 9 Q. Was it a person who asked you?  
 10 A. I believe it was.  
 11 Q. Let me --  
 12 A. Yeah, I don't -- I believe it was  
 13 Mel Harris.  
 14 Q. You believe Mel Harris asked you  
 15 to serve as custodian of record for LR  
 16 Credit 13 in the Guzman action, and LR  
 17 Credit 18 in the Bueno action; is that  
 18 correct?  
 19 A. That's correct.  
 20 Q. Okay. Did anybody else speak to  
 21 you about your role as custodian of records  
 22 aside from Mel Harris?  
 23 A. I don't recall.  
 24 Q. Anybody from LR Credit 13?  
 25 A. No.

52 (Pages 205 to 208)

209

1 T. FABACHER  
 2 Q. Anybody from LR Credit 18?  
 3 A. No.  
 4 Q. Did you ever speak to anybody who  
 5 worked for LR Credit 13?  
 6 A. Never.  
 7 Q. Did you ever speak to anybody who  
 8 worked for LR Credit 18?  
 9 A. Never.  
 10 Q. So, it's fair to assume nobody  
 11 from LR Credit 13 -- is it fair to assume  
 12 that nobody from LR Credit 13, LLC assisted  
 13 you in drafting the affidavit of merit in  
 14 the Guzman action?  
 15 MR. KESHAVARZ: Objection to form.  
 16 A. Could you repeat the question?  
 17 Q. Okay. Sure. Is it fair to assume  
 18 that nobody who worked at LR Credit 13  
 19 assisted you in drafting the affidavits of  
 20 merit in the Guzman action?  
 21 MR. KESHAVARZ: Objection.  
 22 Form. Calls for speculation.  
 23 A. That's accurate.  
 24 Q. And the same question as to LR  
 25 Credit 18 as to the Bueno action?

210

1 T. FABACHER  
 2 MR. KESHAVARZ: Objection.  
 3 Form.  
 4 A. That's accurate.  
 5 Q. So, nobody from LR Credit 13, LLC  
 6 instructed you to create the document of --  
 7 affidavit of merit in the Guzman action?  
 8 MR. KESHAVARZ: Objection to form.  
 9 A. That's correct.  
 10 Q. And the same question I'll ask,  
 11 the LR Credit 18 in the Bueno action?  
 12 MR. KESHAVARZ: Objection.  
 13 Form.  
 14 A. Correct.  
 15 Q. And you never discussed -- you  
 16 never -- you never discussed Jose Guzman  
 17 with anybody at LR Credit 13, correct?  
 18 A. The particulars of the case?  
 19 Q. Correct.  
 20 A. That's correct.  
 21 Q. And I have the same question as to  
 22 LR Credit 18 in the Bueno action. You --  
 23 you never discussed Mrs. -- or Miss Bueno  
 24 with anybody at LR Credit 18, correct?  
 25 A. That's correct.

211

1 T. FABACHER  
 2 MR. MILLS: Nothing further.  
 3 MR. LICHTMAN: I just have a  
 4 couple.  
 5 EXAMINATION BY  
 6 MR. LICHTMAN:  
 7 Q. Good afternoon, Mr. Fabacher. My  
 8 name is Jeffrey Lichtman. I am representing  
 9 Samserv, Inc. and William Mlotok in the  
 10 Guzman case, and in the Bueno case.  
 11 Did you ever participate in any  
 12 discussions with anyone at Samserv, Inc.  
 13 with regard to service of process in  
 14 connection with any case that was brought by  
 15 the Mel Harris law firm?  
 16 A. What -- what -- can you be  
 17 specific? Like, what do you mean? Like,  
 18 any discussion?  
 19 Q. Yes. Did you have any discussions  
 20 with anyone at Samserv about their service  
 21 of process on behalf of Mel Harris?  
 22 A. So, again -- so, their -- about  
 23 their service. Like, their -- their -- what  
 24 do you mean about their service of process?  
 25 Q. About the method of service or

212

1 T. FABACHER  
 2 process --  
 3 A. No.  
 4 Q. -- in that -- cases.  
 5 A. No.  
 6 Q. When you did speak to people at  
 7 Samserv, Inc. what was the general topics of  
 8 conversation?  
 9 A. The only --  
 10 MR. KESHAVARZ: Objection to form.  
 11 A. -- the only person I ever spoke to  
 12 was -- was Bill, Bill Mlotok.  
 13 Q. Okay. And -- and what was the  
 14 general nature of the conversation?  
 15 MR. KESHAVARZ: Object to the  
 16 form.  
 17 A. How are you doing.  
 18 Q. So, they were all personal in  
 19 nature?  
 20 A. All personal in nature. I -- I  
 21 can't -- I do remember one or two things  
 22 like -- no, I -- I -- I can't remember any  
 23 particular -- it wasn't my area. So, I  
 24 didn't -- again, that was all  
 25 pre-litigation. It wasn't my area.

53 (Pages 209 to 212)

213

1 T. FABACHER  
 2 Q. Okay. So, just to summarize, tell  
 3 me if I'm saying this correctly, that  
 4 because the service of process function  
 5 happened earlier in the case as opposed to  
 6 post-judgment, that was not an area that you  
 7 would get involved with in the context of  
 8 your -- your working for Mel Harris, fair?  
 9 A. It's -- okay. I remember one  
 10 conversation about taking photos. That was  
 11 it.  
 12 Q. Okay. What --  
 13 A. So --  
 14 Q. -- was that conversation about?  
 15 A. That was, basically, that Bill was  
 16 going to -- he asked some questions about  
 17 the GPS, if he could do the GPS and take the  
 18 photos.  
 19 Q. Okay. So, just then to frame this  
 20 so that we could have a better transcript,  
 21 was there a time at which process servers  
 22 for Samserv were equipped with a type of  
 23 device that would allow them to record GPS  
 24 data when they were serving process?  
 25 A. Correct.

214

1 T. FABACHER  
 2 Q. And by GPS data, we mean some type  
 3 of digital record of a location where the  
 4 process server was at the time of serving  
 5 process?  
 6 A. From my understanding, correct.  
 7 Q. And then this would be stored  
 8 somewhere so it could corroborate exactly  
 9 where the process server was in connection  
 10 with a particular job that was attached to a  
 11 specific location, correct?  
 12 A. As -- as the -- as the phone  
 13 company report, correct.  
 14 Q. Okay. And other than that, do you  
 15 remember having any conversations other than  
 16 hello, how are you, and GPS conversations  
 17 with Mr. Mlotok?  
 18 A. Nothing. Again, it wasn't my  
 19 area. No, I can't really recall much.  
 20 MR. LICHTMAN: Okay. Thank you  
 21 very much.  
 22 MR. KESHAVARZ: Just -- just  
 23 quickly. And I'll say it really loud.  
 24 Do you know who had the main  
 25 relationship at Mel Harris with

215

1 T. FABACHER  
 2 Samserv, or do you know?  
 3 THE WITNESS: No, I don't know.  
 4 That wasn't my area.  
 5 MR. KESHAVARZ: Okay. That's it.  
 6 MR. SCHER: Good?  
 7 MR. KESHAVARZ: Yes.  
 8 Off the record.  
 9 (Whereupon, at 4:37 p.m., the  
 10 examination of this witness was  
 11 concluded.)  
 12

---

TODD FABACHER

13  
 14  
 15  
 16 Subscribed and sworn to before me  
 17 this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

---

NOTARY PUBLIC

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1 T. FABACHER  
 2 E X H I B I T S  
 3  
 4 PLAINTIFF EXHIBITS:  
 5 EXHIBIT EXHIBIT  
 6 NUMBER DESCRIPTION PAGE  
 7 1 Fabacher subpoena 4  
 8 in Guzman action  
 9 2 Fabacher subpoena 4  
 10 in Bueno action  
 11 3 Affidavit of Merit 72  
 12 (LR Credit 18, LLC  
 13 vs. Agustina Bueno)  
 14 4 Opinion in Monique 84  
 15 Sykes vs. Mel  
 16 Harris  
 17 5 Affidavit of Merit 105  
 18 (LR Credit 13, LLC  
 19 vs. Jose Guzman)  
 20 6 Todd Fabacher 146  
 21 LinkedIn page  
 22 7 Affidavit of 159  
 23 service (LR Credit  
 24 18, LLC vs.  
 25 Agustina Bueno)  
 8 Data file produced 196  
 by LR Credit in the  
 Guzman case (about  
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1 T. FABACHER  
2 C E R T I F I C A T E  
3  
4 STATE OF NEW YORK )  
: SS.:  
5 COUNTY OF KINGS )  
6  
7 I, RICHARD AURELIO, a Notary Public for  
8 and within the State of New York, do hereby  
9 certify:  
10 That the witness whose examination is  
11 hereinbefore set forth was duly sworn and  
12 that such examination is a true record of  
13 the testimony given by that witness.  
14 I further certify that I am not related  
15 to any of the parties to this action by  
16 blood or by marriage and that I am in no way  
17 interested in the outcome of this matter.  
18 IN WITNESS WHEREOF, I have hereunto set  
19 my hand this 18th day of April 2017.  
20  
21  
22  
23 \_\_\_\_\_  
RICHARD AURELIO  
24  
25

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